

United States District Court
Northern District Of California

Before The Honorable Charles R. Breyer

United States of America,)
)
 Plaintiff,)
)
 vs.)
)
 Edward Rosenthal,)
)
 Defendant.)
 _____)

NO. CR 02-0053 CRB

Jury Trial

San Francisco, California
Wednesday, May 16, 2007

Reporter's Transcript of Proceedings

Appearances:

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Robert AmparC!n, Esquire
Omar Figueroa, Esquire

(Appearances continued on next page.)

Reported By: Sahar McVickar, RPR, CSR 12963
Official Reporter, U.S. District Court
for the Northern District of California

(Computerized Transcription by Eclipse)

Appearances, continued:

Also Present:

Department of the Treasury
IRS Special Agents:

Juan C. Saavedra
David Mateer
Justin Fletcher

Karen Jo Koonan
Jury Consultant to the Defense

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Plaintiff's Witnesses:

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13 None

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11 THE COURT: Then if we get more people, maybe we can
12 angle the screen or something of that nature.

13 Okay. Let the record reflect that all jurors are
14 present.

15 (Jury in at 8:30 a.m.)

16 THE COURT: Good morning, ladies and gentlemen.
17 Thank you for being so prompt. We appreciate it.

18 Mr. Bevan, you may continue.

19 MR. BEVAN: Thank you, Your Honor --

20 THE COURT: Wait, wait. Do you want to have a seat,
21 so we can start?

22 Okay. Thank you.

23 And your name is?

24 THE WITNESS: Dan Tuey, sir.

25 THE COURT: Okay.

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Tuey - Direct, cont'd., / Bevan

1 MR. BEVAN: Good morning.

2 THE COURT: Ladies and gentlemen of the jury, you
3 notice that we have a new screen here and that is for the
4 purpose of -- I think also it is a -- it will help you looking
5 at it, but it's also because you can look at it straight on
6 rather than turning in your seats. And also if the public
7 comes in and they want to observe the testimony or at least the
8 exhibits, they can see it that way. And if you have any
9 problem seeing it, let me know, just raise your hand and we'll
10 address it.

11 Mr. Bevan, go ahead.

12 DIRECT EXAMINATION (continued)

13 BY MR. BEVAN:

14 Q. Good morning, Mr. Tuey.

15 A. Good morning, sir.

16 Q. When we broke yesterday we had just finished playing a CD
17 of -- or actually one of the videos that you have testified you
18 took the morning of February 12th, 2002, at 1419 Mandela
19 Parkway; is that correct?

20 A. Yes, sir.

21 Q. And we had actually -- I showed you CD number 3, with
22 respect to -- which was -- is the one that was played. CD
23 number 1 and CD number 2 that are part of Exhibit 7, would it
24 be fair to say that these other two CDs essentially depict the
25 clone plants laid out for purposes of accounting for them and

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1 counting them; is that correct?

2 A. Yes, sir.

3 Q. Now, in addition to your videotape, were there also still
4 photographs taken of the interior of that location that
5 morning?

6 A. Yes, sir.

7 Q. Mr. Tuey, showing you Government's Exhibit 8 for
8 identification, can you look through each of those photographs
9 and then I'm going to ask you a question whether you can say
10 that those are photographs taken of the interior of the
11 building that day?

12 A. Yes, sir, they are.

13 MR. BEVAN: I would offer Exhibit 8 into evidence.

14 THE COURT: Objection?

15 MS. GREENBERGER: No objection.

16 THE COURT: Admitted.

17 (Plaintiff's Exhibit 8 was received in

18 evidence.)

19 MR. BEVAN: May I publish this to the jury?

20 THE COURT: Yeah.

21 BY MR. BEVAN:

22 Q. Now, in connection with the search of this location, were
23 the plants counted?

24 A. Yes, they were.

25 Q. And were you involved in the counting?

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1 A. I was.

2 Q. And did you reflect the total number of plants that were
3 recovered and seized inside that building?

4 A. Yes, sir.

5 Q. And if you need to reference your report, but what was the
6 total number of plants that were seized?

7 A. It's in my report, let me -- there were 3163 plants,
8 approximately.

9 Q. 3163 plants?

10 A. Yes, sir.

11 Q. Now, did you in your report break it down as to the number
12 of so-called marijuana clone plants versus other size plants?

13 A. Yes, sir.

14 Q. How many clone plants were recovered?

15 A. Approximately 2692.

16 Q. And what comprised the difference between the 3163 and the
17 2692?

18 A. The 2692 were clones or cuttings from some of the mother
19 plants that we saw in the video and the remainder would have
20 been either the mother plants or the plants that were
21 germinating to flower for marijuana bud.

22 Q. And I want to go through and have you identify each of
23 these boards.

24 MR. BEVAN: May I have the witness step down from
25 the witness stand, Your Honor?

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Tuey - Direct / Bevan

1 THE COURT: Yes.

2 BY MR. BEVAN:

3 Q. Agent Tuey, if you would take this pointer.

4 A. Sure.

5 Q. And showing you on the easel Government's Exhibit 9, board
6 3 of 8, does that depict the office area or working space area?

7 A. Yes, it does.

8 Q. Exhibit 9, board 6 of 8, does that depict the clone area?

9 A. Yes.

10 Q. Board 7 of 8, Exhibit 9, has five photos, lettered A
11 through E. Do each of those photos -- are those enlargements
12 of photos that were taken that day?

13 A. Yes, sir.

14 Q. Exhibit 9, board 4 of 8, do those pictures -- are those
15 enlargements of photos that were taken that day?

16 A. Yes.

17 Q. Now, with respect to that board, focusing your attention,
18 Mr. Tuey, on picture B --

19 A. Uh-huh.

20 Q. -- take a look at the stems on those plants. Based on your
21 training and experience, can you draw any conclusions about the
22 conditions of those stems in relation to a cloning operation?

23 A. These would have been the mother plants from which the
24 clones would have been cut.

25 Q. Okay.

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Tuey - Direct / Bevan

1 And what is it about the condition of those stems

2 that enabled you to say that?

3 A. If you can see the bottom part of the stem bear leaves, and

4 so this would have been a portion where they actually took the

5 cutting for the clones.

6 Q. Okay.

7 Are there other plants here on this board that are

8 in a different condition?

9 A. Yes, there are.

10 Q. And which photo is that?

11 A. It would be photo C.

12 Q. And how are those plants different than the ones you just

13 identified that would be used to make clippings from?

14 A. If you look at the plants, they --

15 Q. Can you point to --

16 A. I'm sorry. They are fuller in nature. The plants are

17 fuller in nature with more leaves down near the bottom of the

18 stem, which means that nobody had taken clippings, which in my

19 experience, would show that they meant the leaves to actually

20 flower and bud to extract the marijuana.

21 MS. GREENBERGER: Objection. Speculation.

22 THE COURT: Sorry?

23 MS. GREENBERGER: I said objection, speculation.

24 THE COURT: Okay. Sustained.

25 Would you lay a foundation as to his expertise in

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1 the area.

2 MS. GREENBERGER: I would move to strike.

3 THE COURT: His last response may be stricken. The
4 jury is admonished to disregard it.

5 You may lay a foundation.

6 MR. BEVAN: Yes, Your Honor.

7 BY MR. BEVAN:

8 Q. Mr. Tuey, while you were an agent you have already
9 testified you had occasion to be involved in the searches of
10 indoor grows.

11 A. Yes, sir.

12 Q. And have you encountered indoor grows that involved a
13 cloning operation?

14 A. Yes.

15 Q. And by cloning operation, do you understand me to be
16 referring to the process of taking clippings from grown
17 marijuana plants, so-called mother plants, and essentially
18 starting new plants from the clippings from the mother plants?

19 A. Yes, sir.

20 Q. Okay.

21 And are you familiar with that process?

22 A. I am.

23 Q. Have you actually had training on the job or formal
24 training how to deal with that?

25 A. Both, yes, sir.

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1 Q. And when you encounter a grow that has those components,
2 are you able to look at the plants and detect whether or not
3 there is a cloning operation?

4 A. Yes, sir.

5 Q. Does the presence of clones in a grow like that suggest to

6 you that there could be a cloning operation?

7 A. Yes, sir.

8 Q. And secondly, looking at the condition of the mother plants
9 as you described this morning, is that also an indication based
10 on your training and experience that a cloning operation
11 exists?

12 A. Yes, sir.

13 Q. And with respect to a so-called flowering process, do you
14 understand that to mean that plants are allowed to bud, they
15 are harvested, dried and able to be distributed as processed or
16 dried marijuana?

17 A. Yes, sir.

18 Q. And based on that training and experience, were you able to
19 discern or detect what sort of operation the grow at Mandela
20 Parkway consisted of?

21 A. Yes, sir, I could.

22 Q. And what was that?

23 A. There was both a clone operation and an operation where
24 they were growing marijuana to process for the dried bud.

25 Q. Okay.

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1 So would it be fair to say, then, that there were
2 essentially three categories of marijuana plants, that is,
3 so-called mother plants that were to be used to propagate or
4 expand on the clones, plants allowed to go to budding and dried
5 and processed, and then finally the clone plants?

6 A. Yes, sir.

7 Q. Okay.

8 Exhibit 9, board 8 of 8, here again, are these two

9 photos enlargements of still photos taken that day?

10 A. Yes, sir.

11 Q. And I would like to focus your attention on the newspaper
12 that is in photo B. Appears to be a portion of the
13 San Francisco Chronicle with a Polaroid picture, do you see
14 that?

15 A. Yes, sir.

16 Q. Showing you, Mr. Tuey, Government's Exhibit 25S, as in
17 Sally, is that, in fact, the Chronicle paper with the Polaroid
18 that was -- that is depicted in that photo B?

19 A. It is.

20 MR. BEVAN: I would move 25S in evidence, Your
21 Honor.

22 THE COURT: Any objection?

23 MS. GREENBERGER: No, Your Honor.

24 THE COURT: 25S admitted.

25 ///

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1 (Plaintiff's Exhibit 25S was received in
2 evidence.)

3 MR. BEVAN: Ask permission to publish it to the
4 jury.

5 THE COURT: Yes.

6 BY MR. BEVAN:

7 Q. Mr. Tuey, showing you Government's Exhibit 21, are these --
8 take a look at 21.

9 A. Yes, sir.

10 Q. Actually, take them out of the plastic and tell me whether
11 or not those -- Exhibit 21 are the pages reflected or pieces of
12 paper reflected in that --

13 A. Yes, sir. They are.

14 Q. Okay.

15 MR. BEVAN: I would offer Exhibit 21 into evidence.

16 THE COURT: Any objection?

17 MS. GREENBERGER: No objection.

18 MR. BEVAN: I would ask permission --

19 THE COURT: Yes. That's Exhibit?

20 MR. BEVAN: Twenty-one.

21 THE COURT: Thank you.

22 (Plaintiff's Exhibit 21 was received in
23 evidence.)

24 BY MR. BEVAN:

25 Q. And is it correct, Mr. Tuey, that yesterday in the

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1 videotape I believe during your narrating the video, you
2 identified calendars that were -- that are seen on the video,
3 do you recall that?

4 A. Yes, sir.

5 Q. Showing you, Exhibit 25Y, can you identify this calendar as
6 being one of the calendars taken from inside that building that
7 day?

8 A. Yes, sir.

9 MR. BEVAN: I would offer 25Y into evidence, Your
10 Honor.

11 THE COURT: Any objection?

12 MS. GREENBERGER: No, Your Honor.

13 THE COURT: Admitted.

14 (Plaintiff's Exhibit 25Y was received in
15 evidence.)

16 BY MR. BEVAN:

17 Q. And yesterday -- actually, before we leave the issue of
18 grow calendars or calendars, Exhibit 25X, Agent Tuey, 25X is a
19 second calendar. This is the month of September 2001. And
20 this is also for the month of September 2001; can you say, sir,
21 whether or not those two pages were taken from inside Mandela
22 Parkway that morning?

23 A. Yes, they were.

24 MR. BEVAN: I would offer Exhibit 25X in evidence
25 and ask permission to publish it to the jury.

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1 THE COURT: Any objection?

2 MS. GREENBERGER: No, Your Honor.

3 THE COURT: Admitted.

4 (Plaintiff's Exhibit 25X was received in
5 evidence.).

6 BY MR. BEVAN:

7 Q. Exhibit 9, board 5 of 8, Mr. Tuey, here again, are those
8 enlargements of photos that were taken that day?

9 A. Yes, sir.

10 Q. Now, yesterday when we played the video that you took,
11 there was noise in the background, that appeared to be machines
12 or equipment running or what have you; when you went into the
13 building that morning, was the -- was the equipment running,
14 that is was the grow operational?

15 A. Yes, it was.

16 Q. Were the lights on?

17 A. They were.

18 Q. Were the ballasts running?

19 A. Yes, sir.

20 Q. And you had pointed out I believe in your narrative that
21 the timer was set, at least one of the timers, was set midnight
22 to --
23 A. Noon.
24 Q. -- to noon?
25 A. Yes, sir.

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1 Q. So when you went in there to execute the search warrant,
2 you and other agents that was within the period on the timer
3 that called for the lights to be on and essentially light --
4 the plants being lit up to simulate the sun; is that correct?
5 A. Yes, sir.
6 Q. And am I correct that that is the function of the lights on
7 an indoor grow, essentially to take the place of the sun if
8 these were being grown outdoors; is that correct?
9 A. Yes, sir.
10 MS. GREENBERGER: Objection. Leading.
11 MR. BEVAN: I'll rephrase.
12 BY MR. BEVAN:
13 Q. What is the function of the lights on an indoor growth?
14 A. The lights are to provide artificial sunlight to the plants
15 to assist them in their growth.
16 Q. And then the final board on Exhibit 9, board 2 of 8,
17 Mr. Tuey, is that again an enlargement of the -- a picture
18 taken that day?
19 A. Yes, sir.
20 Q. And indeed is that an enlargement of the first photo -- you
21 don't have the exhibit in front of you but that is an
22 enlargement of the -- another picture?

23 A. Yes, sir.

24 Q. Let me ask you this: If you were to stand at the front
25 door of Mandela Parkway, that building that morning, and stand

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1 right there in front of the door, could you see in? What do
2 you see?

3 A. As I walk up -- I mean, pretty much this is what you would
4 see with the door closed.

5 Q. Okay.

6 So if you stood right here, where the doormat might
7 be, could you look in and see the plants?

8 A. No.

9 Q. Okay.

10 You can take your seat.

11 A. Thank you.

12 MR. BEVAN: I would offer the entire Exhibit 9
13 series.

14 THE COURT: Was 3 of 8 identified? I may not have
15 written it down. Three of 8?

16 MR. BEVAN: I've got 2, 5, 8, 4, 7, 6, 3.

17 THE COURT: Three was the first one.

18 MR. BEVAN: Yes.

19 THE COURT: Okay. Any objection?

20 MS. GREENBERGER: No, Your Honor.

21 THE COURT: Admitted in its entirety.

22 MR. BEVAN: Thank you.

23 (Plaintiff's Exhibit 9 in its entirety was
24 received in evidence.)

25 ///

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1 BY MR. BEVAN:

2 Q. Now, were the -- were all the marijuana clones accounted
3 for and collected to be submitted to the -- to be retained as
4 evidence?

5 A. Yes, sir.

6 Q. And showing you, Mr. Tuey, Government's Exhibit 10, which
7 is a DEA evidence box. If you need to stand up -- is there an
8 evidence label on that box that bears your signature or your
9 name?

10 A. There is.

11 Q. And could you explain to the Court and the jury how you
12 collected the clones and whether or not the clones ended up --
13 how they ended up being boxed or packaged for submission to the
14 lab or retention as evidence?

15 A. We collected all the clones from the Mandela Parkway
16 location, and I segregated them based on whether or not there
17 was a root structure. I individually packaged those in bags
18 and then I placed the whole lot inside this evidence box.

19 Q. Okay.

20 Now, there is a seal on that box, correct?

21 A. Yes, sir.

22 Q. And do you recognize the name that is on that seal?

23 A. Catherine Rucker.

24 Q. Do you know Catherine Rucker to be a former chemist at the
25 lab?

1 A. Yes, sir.

2 Q. If you would, sir, taking these scissors, let's take a look
3 at what's in that box.

4 A. Want me to remove the contents?
5 Q. Pardon me?
6 A. Would you like me to remove the contents?
7 Q. Sure.
8 A. Place them?
9 Q. Just put it on the witness stand.
10 A. Okay.
11 Q. Okay.
12 A. Okay to place this here?
13 Q. Could you identify, Mr. Tuey, what is it that that box
14 contains?
15 A. The marijuana clones.
16 Q. Okay.
17 And is your name on any of those evidence tags?
18 A. Not on these. These were of the chemist.
19 Q. Okay.
20 What about on the bag?
21 A. The bags are my signature, yes, sir.
22 Q. Okay.
23 Could you verify that each of the bags has your
24 signature or name on it?
25 A. They don't have my name on them because we place them in

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1 this seal, but I can recognized this as my writing.
2 Q. Okay.
3 Specifically, did you place the plants in these
4 bags?
5 A. Yes, sir.
6 Q. Okay.

7 So the writing that you are referring to is -- which
8 writing on this bag is yours?

9 A. It says "clones with roots" and that would be my writing.

10 Q. So you placed the plant in that?

11 A. Yes, sir.

12 Q. Where did you get this bag? Says Home Depot.

13 A. Home Depot.

14 Q. Okay.

15 They sell evidence bags?

16 A. We purchased these because they were of a size that would
17 be sufficient. Also because they are multi-plied, they
18 wouldn't break as easily as regular.

19 Q. How about the second bag, is your writing on that?

20 A. It is.

21 Q. In this one, the writing says what?

22 A. "Clones without roots."

23 Q. Okay.

24 So you differentiated clones with roots and clones
25 without roots; is that correct?

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1 A. Yes, sir.

2 Q. And when you turned in the plants to the lab, were they in
3 those bags?

4 A. They were.

5 Q. Okay.

6 So would it be fair to say, then, that the -- the
7 plants that you seized that day reduced themselves down to what
8 we see in front of us in this box?

9 A. Yes, sir.

10 MR. BEVAN: Your Honor, I would offer Exhibit 10 in

11 evidence, which is DEA Exhibit 40L, as in Larry.

12 THE COURT: Any objection?

13 MS. GREENBERGER: No, Your Honor.

14 THE COURT: Admitted.

15 (Plaintiff's Exhibit 10 was received in
16 evidence.)

17 MR. BEVAN: I would ask permission, Your Honor, to
18 publish one of the bags to the jury.

19 THE COURT: Go ahead.

20 BY MR. BEVAN:

21 Q. Now, did you also, Mr. Tuey, take what's known as a bulk
22 sample of the plants?

23 A. Yes, sir.

24 Q. And what is the -- what does the term "bulk sample" refer
25 to and what is the purpose of taking a bulk sample from a

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1 marijuana grow that you are processing as evidence?

2 A. The bulk sample is a representative sample of the entirety
3 of plants, total number of plants in a marijuana grow.

4 Q. Okay.

5 And is that consistent with DEA procedure to take a
6 bulk sample?

7 A. Yes, sir.

8 Q. And is that to facilitate in the chemical analysis of
9 whatever the substance is?

10 A. Yes, sir.

11 Q. And did you take a bulk sample here?

12 A. I did.

13 Q. Taking a look at Government's Exhibit 12, is your name --

14 is your name on that box?

15 A. Yes, sir.

16 MS. GREENBERGER: Counsel, what exhibit number?

17 MR. BEVAN: Twelve.

18 BY MR. BEVAN:

19 Q. And do we need to break into that box to -- let's break
20 into the box.

21 Who is the last person to seal that?

22 A. I think it says Pickette, but it's covered with tape, so I
23 believe it says Jon Pickette.

24 Q. Could you look on the underside --

25 A. Oh, yes, I'm sorry. Cathy Rucker.

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1 Q. The same chemist you referred to?

2 A. Yes.

3 Q. Could you cut into that box and let's take a look at what
4 is in there.

5 A. Sure.

6 Q. Okay.

7 And you've removed, am I correct, Mr. Tuey, three
8 sealed evidence containers that have -- appear to be plant
9 material?

10 A. Yes, sir.

11 Q. And do you believe and recognize that to be the bulk
12 sample?

13 A. Yes, sir.

14 MR. BEVAN: I would offer Exhibit 12 in evidence,
15 Your Honor.

16 THE COURT: Any objection?

17 MS. GREENBERGER: No, Your Honor.

18 THE COURT: Admitted.

19 (Plaintiff's Exhibit 12 was received in
20 evidence.)

21 MR. BEVAN: I would ask permission to publish this
22 to the jury.

23 THE COURT: Go ahead.

24 BY MR. BEVAN:

25 Q. And Mr. Tuey, finally, did you take what is known as

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1 subsamples?

2 A. Yes, sir.

3 Q. And what are subsamples and what is the purpose of taking
4 so-called subsamples?

5 A. They would be random cuttings from different locations
6 inside a marijuana grow.

7 Q. Okay.

8 And the function of that would be to facilitate the
9 analysis of what are believed to be marijuana plants inside the
10 building?

11 A. Yes, sir.

12 Q. Showing you Exhibit -- Exhibit 11 series?

13 THE COURT: Sorry?

14 MR. BEVAN: It's 11 series, Your Honor, 11A through
15 11J.

16 BY MR. BEVAN:

17 Q. Agent Tuey, first of all, is your name or signature on the
18 label on that package?

19 A. Yes, sir.

20 Q. Could you take the scissors and cut into that package.

21 By the way, who is the last person to have sealed
22 that? Are there two seals there?

23 MS. GREENBERGER: Objection. Hearsay.

24 THE COURT: Overruled.

25 ///

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1 BY MR. BEVAN:

2 Q. Can you make out the signatures?

3 A. It would be Dan Tuey.

4 Q. And is there another signature.

5 THE COURT: Let's lay a foundation that is he
6 familiar with those people. I see that he is familiar with
7 their signatures.

8 BY MR. BEVAN:

9 Q. Have you seen Cathy Rucker's signature before?

10 A. Yes, sir.

11 Q. And is that visible on there as Cathy Rucker?

12 A. Yes, sir.

13 Q. And Dave Mateer, is that legible as David Mateer?

14 A. Yes, sir.

15 THE COURT: And have you seen his signature before?

16 THE WITNESS: I have.

17 THE COURT: And both the signatures on that envelope
18 appearing to be the signature of the individuals you have
19 identified?

20 THE WITNESS: Yes, sir.

21 THE COURT: Admitted.

22 MR. BEVAN: Thank you.

23 THE COURT: Exhibit --

24 MR. BEVAN: 11 series, Your Honor, A through J.

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1 (Plaintiff's Exhibit 11A through 11J were
2 received in evidence.)

3 BY MR. BEVAN:

4 Q. Am I correct, Mr. Tuey, that there is an envelope in that
5 packet that is marked as DEA 40A through 40J, each one
6 constituting a separate so-called subsample taken from the
7 plants inside Mandela Parkway that day?

8 A. Yes, sir.

9 Q. Pardon me?

10 A. Yes, sir.

11 Q. And with respect to the envelopes, could you hold those up
12 so we know which ones those are. Is your writing on those
13 invoices?

14 A. Yes, sir.

15 Q. And did you physically put the sample of marijuana in that
16 envelope to be processed with the lab?

17 A. Yes, sir.

18 MR. BEVAN: And for the record, Your Honor, each of
19 these envelopes bear a different evidence tag. It's 11A, 11B,
20 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J. That would be my
21 proffer.

22 THE COURT: Admitted.

23 BY MR. BEVAN:

24 Q. Now, in connection with the -- the clones that you have
25 identified were seized, and I think you've indicated there were

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1 approximately 2692 growing marijuana clone plants; is that

2 correct?

3 A. Yes, sir.

4 Q. Did you retain as evidence the stakes that were in the --

5 in the clone plant beds?

6 A. Yes, sir.

7 Q. Showing you, sir, Exhibit 19 for identification.

8 I'm removing a series of plastics that contain
9 different stakes. Could you look through those and tell us
10 whether or not, in fact, those are the stakes there were in the
11 plant beds that day, and you retained those as evidence?

12 A. Yes, sir.

13 Q. And do the stakes --

14 MR. BEVAN: I would offer this exhibit in evidence,
15 Your Honor.

16 THE COURT: Nineteen?

17 Any objection?

18 MS. GREENBERGER: No, Your Honor.

19 THE COURT: Admitted.

20 (Plaintiff's Exhibit 19 was received in
21 evidence.)

22 BY MR. BEVAN:

23 Q. Now, some of the stakes, if not all the stakes, at least
24 some of the stakes have what appear to be a date; is that
25 correct?

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1 A. Yes, sir.

2 Q. And based on your training and experience have you -- well,
3 before I ask that, have you encountered indoor marijuana grows
4 where the stakes, in fact, have a date on them?

5 A. Yes.

6 Q. And what would be the -- first of all, do you -- is it your
7 opinion that the writing on the stake as opposed to the
8 embossed lettering is a date?

9 A. Yes, sir.

10 Q. And what would be your opinion as to what that date
11 reflects?

12 A. It would be the date that they placed the cutting in the
13 growing medium.

14 Q. And what would be the point of tracking that date?

15 A. That way they would know when the cutting was taken and
16 later on when they are maturing more, they would have a sense
17 of what the time line was of when they had done this.

18 Q. Okay.

19 MR. BEVAN: I would ask permission to publish these
20 to the jury.

21 THE COURT: Go ahead.

22 BY MR. BEVAN:

23 Q. Showing you, Mr. Tuey, Exhibit 25Z, do you recognize that
24 as a document that was seized inside Mandela Parkway?

25 A. Yes, sir.

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Tuey - Direct / Bevan

1 MR. BEVAN: I would offer 25Z into evidence.

2 THE COURT: Any objection?

3 MS. GREENBERGER: Not at all.

4 THE COURT: Admitted.

5 (Plaintiff's Exhibit 25Z was received in
6 evidence.)

7 MR. BEVAN: And ask permission to publish it, Your
8 Honor.

9 THE COURT: Go ahead.

10 BY MR. BEVAN: --

11 Q. And were there.

12 MS. GREENBERGER: Can you identify it.

13 MR. BEVAN: Pardon me?

14 MS. GREENBERGER: Can you have the witness identify
15 the exhibit.

16 THE COURT: Yeah, what is it? 25Z.

17 BY MR. BEVAN:

18 Q. Is -- that appears to be a Oakland Fire Department
19 inspection report of some nature?

20 A. Yes, sir.

21 Q. And, Mr. Tuey, were two notebooks seized from inside the
22 Mandela Parkway that morning?

23 A. Yes, sir.

24 Q. Showing you 25A, can you identify that as one of the two
25 notebooks that were seized that day?

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Tuey - Direct / Bevan

1 A. Yes, sir.

2 MR. BEVAN: I would offer 25A in evidence, Your
3 Honor, and ask permission to publish it to the jury.

4 THE COURT: Any objection?

5 MS. GREENBERGER: No, Your Honor.

6 THE COURT: Admitted.

7 (Plaintiff's 25A Exhibit was received in
8 evidence.)

9 BY MR. BEVAN:

10 Q. 25B, Mr. Tuey, can you identify this as the second notebook
11 that was seized from inside the grow that morning?

12 A. Yes, yes, sir.

13 MR. BEVAN: I would offer in evidence, Your Honor,
14 25B, and ask permission --

15 THE COURT: Any objection?

16 MS. GREENBERGER: No, Your Honor.

17 THE COURT: Admitted.

18 (Plaintiff's Exhibit 25B was received in
19 evidence.)

20 BY MR. BEVAN:

21 Q. Showing you, sir, Exhibit 20, is this a piece of paper that
22 was recovered from the grow that day?

23 A. Yes, sir.

24 Q. And --

25 MR. BEVAN: I would offer Exhibit 20 in evidence,

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Tuey - Direct / Bevan

1 Your Honor.

2 THE COURT: Any objection?

3 MS. GREENBERGER: No, Your Honor.

4 THE COURT: Admitted.

5 (Plaintiff's Exhibit 20 was received in
6 evidence.)

7 BY MR. BEVAN:

8 Q. And based on your training and experience, was that -- what
9 does that document appear to you to be?

10 A. This looks like a work -- a detail of a work list for
11 different employees at the location.

12 Q. A work list?

13 A. Yeah, a task list.

14 Q. And are there names on that piece of paper?

15 A. Yes, sir.

16 Q. What are the names?

17 MS. GREENBERGER: I object as speculation, Your
18 Honor.

19 THE COURT: Well, he is giving his opinion.
20 Okay. I'll sustain the objection.

21 MR. BEVAN: I'll lay a foundation.

22 BY MR. BEVAN

23 Q. Have you seen --

24 MS. GREENBERGER: Move to strike the answer.

25 THE COURT: Yes.

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Tuey - Direct / Bevan

1 BY MR. BEVAN

2 Q. In other context, that is, other indoor grows that you have
3 been involved with, seized, observed, plus your training, have
4 you seen lists or pieces of paper that appear to give various
5 duties or tasks to others that may be working on the grow?

6 A. Yes, sir.

7 Q. And what similarities or earmarks of this piece of paper
8 enable you to say in your opinion that that is a -- in the
9 nature of a to-do list?

10 A. Well, there is reference to specific tasks. And there is
11 also references to -- to items that would be specific to an
12 indoor marijuana cultivation site.

13 Q. And the tasks that are referenced there, do they pertain to
14 maintaining a grow, based on your training and experience?

15 A. Yes, sir.

16 Q. Such as what?

17 A. "Spray everything," meaning spray plants. "Package and
18 trim." "Make sure Doug fixes ballast."

19 Q. And ballast --

20 A. Ballasts are the electrical equalizer that maintains the
21 flow of electricity to the high-intensity discharge lights.

22 MR. BEVAN: I'll renew my proffer.

23 THE COURT: The exhibit is in evidence.

24 MR. BEVAN: Okay.

25 ///

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Tuey - Direct / Bevan

1 BY MR. BEVAN:

2 Q. What are the names on that piece of paper?

3 A. Doug, Brian and Evan.

4 THE COURT: Sorry?

5 THE WITNESS: Doug, Brian and Evan.

6 BY MR. BEVAN:

7 Q. Doug, Brian and Evan?

8 THE COURT: Evan or Kevin?

9 THE WITNESS: Evan, E-v-a-n.

10 MR. BEVAN: May I publish this document?

11 THE COURT: Yes.

12 BY MR. BEVAN:

13 Q. Now, you mentioned ballasts, were there ballasts seized
14 from Mandela Parkway?

15 A. Yes, sir.

16 Q. Showing you, sir, Exhibit 17.

17 Is this one of the ballasts that was seized?

18 A. Yes, sir.

19 Q. And how many -- you can make reference to your report, how
20 many ballasts were there inside the Mandela Parkway building
21 that day?

22 A. Approximately 19 ballasts.

23 Q. Okay.

24 What is the function of a ballasts?

25 A. A ballasts regulates the flow of electricity to the lights 417

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1 which consume quite a bit of electricity, so this regulates it
2 in such a way as to prevent the lights from burning out.

3 MR. BEVAN: Okay. I would offer Exhibit 17 into
4 evidence.

5 THE COURT: Any objection?

6 MS. GREENBERGER: No, Your Honor.

7 THE COURT: Admitted.

8 (Plaintiff's Exhibit 17 was received in
9 evidence.)

10 MS. GREENBERGER: Your Honor, for clarification he
11 said 21.

12 THE COURT: No, I think he said 17.

13 MR. BEVAN: Seventeen. If I did, I misspoke.

14 THE COURT: Twenty-one is already admitted into
15 evidence.

16 BY MR. BEVAN:

17 Q. Showing you, sir, Exhibit 16.

18 A. Yes, sir.

19 Q. What is Exhibit 16?

20 A. Light hood.

21 Q. So when you say "light hood," this would be the -- an
22 assembly that contains a light and a hood for it?

23 A. Yes, sir.

24 Q. And how many of those -- did you count those inside Mandela
25 Parkway grow?

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1 A. We did.

2 Q. How many were there?

3 A. May I refer to my report?

4 Q. Sure.

5 A. Thank you. Twenty-four light hoods.

6 MR. BEVAN: I would offer this light hood into
7 evidence.

8 THE COURT: Any objection?

9 MS. GREENBERGER: No, Your Honor.

10 THE COURT: Admitted.

11 (Plaintiff's Exhibit 16 was received in
12 evidence.)

13 BY MR. BEVAN:

14 Q. And Exhibit 18, is this a fan that was seized inside the
15 Mandela Parkway grow?

16 A. Yes, sir.

17 MR. BEVAN: I would offer Exhibit 18 in evidence.

18 THE COURT: Any objection?

19 MS. GREENBERGER: No, Your Honor.

20 THE COURT: Admitted.

21 (Plaintiff's Exhibit 18 was received in
22 evidence.)

23 BY MR. BEVAN:

24 Q. What is the function -- were there other fans like this?

25 A. Yes, sir.

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1 Q. How many total fans did you see?

2 A. May I refer to my report?

3 Q. Sure.

4 A. Thank you. We took that one fan into evidence. I don't
5 recall exactly how many fans. There was -- quite a few of the
6 fans were actually physically attached to the walls and such.

7 Q. Now, showing you 25T and 25E.

8 THE COURT: Twenty-five?

9 MR. BEVAN: 25T and 25E.

10 THE COURT: Those are in evidence.

11 BY MR. BEVAN:

12 Q. Mr. Tuey, first 25T, is that a box top that was taken from
13 a box inside the grow?

14 A. Yes, sir.

15 Q. And the sender or shipper on that label is what?

16 A. McCalif Grow --

17 Q. McCalif Growers?

18 A. Yeah.

19 Q. And that was inside the building; is that correct?

20 A. It was.

21 Q. And these receipts, 25E, were those also inside the
22 building?

23 A. Yes, sir.

24 Q. Showing you, sir, 25H; is this a Hertz Equipment Rental

25 document addressed to Doug Church, 2004 Hearst Avenue,

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1 Berkeley, was that recovered inside the grow?

2 A. It was.

3 MR. BEVAN: I would offer Exhibit 25H into evidence,

4 Your Honor.

5 THE COURT: Admitted.

6 (Plaintiff's Exhibit 25H was received in

7 evidence.)

8 BY MR. BEVAN:

9 Q. And this, Mr. Tuey, this appears to be an invoice for the
10 rental of a -- some sort of a reciprocal saw; is that correct?

11 A. Yes, sir.

12 Q. And what is the date on that invoice?

13 A. Let's see, date and time out was September 20th, 2001.

14 Date and time in was September 21st, 2001.

15 MS. GREENBERGER: What exhibit number is that,
16 Counsel?

17 MR. BEVAN: 25A.

18 And I would ask permission to publish this document,
19 Your Honor.

20 THE COURT: Go ahead.

21 BY MR. BEVAN:

22 Q. Showing you 25I, is this a label that was removed from a
23 package inside the grow?

24 A. Yes, sir.

25 Q. And what does that say?

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1 A. Romeo Packing Company.

2 Q. Okay.

3 MR. BEVAN: I would offer in evidence, Your Honor,
4 Exhibit 25I, and ask permission to publish it.

5 THE COURT: Admitted without objection.

6 (Plaintiff's Exhibit 25I was received in
7 evidence.)

8 MR. BEVAN: May I publish it, Your Honor?

9 THE COURT: Yes.

10 BY MR. BEVAN:

11 Q. Showing you, Agent Tuey, a series of exhibits.

12 MR. BEVAN: And I'll just identify them for the
13 record, Your Honor.

14 Twenty-three, 22, 25C, 24, 25D, 25F, 25J, 25K, 25L,
15 25N, 25O, 25P, 25Q, 25R, 25U, 25V, as in Victor, 25W.

16 BY MR. BEVAN:

17 Q. And Agent Tuey, one by one if you would look through these.
18 And my question with respect to each one of these is, were
19 these seized from inside Mandela Parkway that morning.

20 THE COURT: Mr. Bevan, number 22, 23, and 24?

21 MR. BEVAN: Did you say 22, 23, and 24?

22 THE COURT: Yes.

23 MR. BEVAN: Did I read those off?

24 THE COURT: I thought you did.

25 MR. BEVAN: I'll go through it again.

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1 THE COURT: Well, no. That's all right.

2 MR. BEVAN: I'll make sure they are in there, Your
3 Honor.

4 THE COURT: You read them, I just want to confirm
5 that that was your intention.

6 MR. BEVAN: Yes, Your Honor.

7 BY MR. BEVAN:

8 Q. Were all these seized, Agent -- or Mr. Tuey?

9 A. Yes.

10 THE COURT: Okay.

11 MR. BEVAN: I would offer this series just to be
12 clear; 23, 22, 25C, 24, 25D, 25F, 25J, 25K, 25L, 25N, as in
13 November, 25O.

14 THE COURT: I see. You say 25L?

15 MR. BEVAN: Yes, Your Honor.

16 THE COURT: Okay. Twenty-five.

17 MR. BEVAN: 25N, 25O, 25P, 25Q, 25R, 25U, 25V, and
18 25W.

19 THE COURT: So of that series, what you are not
20 offering is 25M?

21 MR. BEVAN: That's correct.

22 THE COURT: Did you -- what about 25J, is that one
23 in or not? 25J and 25G?

24 MR. BEVAN: 25J has been --

25 THE COURT: You're offering 25J? Okay. What about

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1 25G?

2 MR. BEVAN: No, Your Honor.

3 THE COURT: Okay.

4 Okay. Admitted without objection.

5 MS. GREENBERGER: Yes, Your Honor.

6 (Plaintiff's Exhibits 22, 23, 24, 25C, 25D,
7 25F, 25J, 25K, 25L, 25N, 25O, 25P, 25Q,
8 25R, 25U, 25V and 25W were received in
9 evidence.)

10 MR. BEVAN: Permission to pass these out to the
11 jury.

12 THE COURT: Yes.

13 BY MR. BEVAN

14 Q. And finally, Mr. Tuey, on the video we saw some black bags
15 of what appeared to be, you described in some way, do you
16 recall those?

17 A. Yes, sir.

18 Q. What did those consist of?

19 A. It's the residue, leaves and stems from processing the
20 marijuana bud.

21 Q. Okay.

22 And do I understand correctly that at least one of
23 those bags of material was seized and taken that day?

24 A. Yes, sir.

25 Q. And there were others of those bags that were --

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1 including -- there was a bag that had like a pair of old
2 trimming shears in it, do you recall that?

3 A. Yes, sir.

4 Q. And were some of those bags left behind?

5 A. We did leave them, yes, sir.

6 Q. And in your opinion, have you seen what is in those bags?
7 Did they have any evidentiary value, like, for example, plant
8 totals?

9 A. No, sir.

10 Q. And reflecting back on that day, should the rest of those
11 bags have been taken?

12 A. We could have taken all of them, yes, sir.

13 MR. BEVAN: That's all I have.

14 THE COURT: Okay.

15 Cross?

16 MS. GREENBERGER: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MS. GREENBERGER:

19 Q. Good morning, Agent Tuey.

20 A. How are you doing?

21 Q. Can you tell us a little bit about your training and
22 experience in regards to narcotics cases.
23 A. I graduated from the DEA Academy in -- I'm sorry,
24 October 1996. Received instruction in the basic -- in
25 narcotics investigation. I was a narcotics agent for 11 years.

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Tuey - Cross / Greenberger

1 Q. What year did you leave the DEA?
2 A. March 31st of 2007.
3 Q. And what was your basis for leaving?
4 A. It's a personal issue.
5 Q. Did you lose your job?
6 A. No.
7 Q. What training do you have in regards to marijuana
8 specifically? For example, can you quantify the hours at the
9 academy that were devoted to marijuana training?
10 A. I don't recall the exact hours. Our training and -- in
11 drug ID was -- included identification of marijuana.
12 Q. Ten hours or less?
13 A. More than that.
14 Q. Can you give us an approximate number of hours.
15 A. I really can't recall. I mean, it was four months of
16 training. So...
17 Q. And was that four months of training your only formal
18 training with regard to marijuana?
19 A. No.
20 Q. What other formal training have you had?
21 A. I don't recall the year, but I have attended training
22 courses at different CAMP conferences, the Campaign Against
23 Marijuana Production, I believe. And also I attended a

24 three-day indoor marijuana investigator's school. Again, I
25 don't recall the exact year.

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Tuey - Cross / Greenberger

1 Q. Can you quantify what portion of your four-month training
2 at the academy was devoted to marijuana? In other words,
3 percentage-wise?

4 A. Like I said, it was rolled into drug ID, so...

5 Q. The identification of marijuana?

6 A. Yes, the drug identification, period.

7 Q. You don't have any training in botany, do you?

8 A. No, I'm not a botanist.

9 Q. What about plant physiology?

10 A. No.

11 Q. You don't have a horticulture degree?

12 A. I do not.

13 Q. Ever taken in classes in horticulture?

14 A. No.

15 Q. Agricultural science?

16 A. No.

17 Q. Have you had an opportunity to read any literature about
18 marijuana?

19 A. Yes.

20 Q. Can you tell us what you've read.

21 A. Just in personal research on the Internet. I can't recall
22 specifically what I read.

23 Q. You do know my client Ed Rosenthal is a publisher and
24 writer on the subject of marijuana, don't you?

25 A. I think so, yeah. I think I've seen a couple of his books,

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Tuey - Cross / Greenberger

1 I don't recall specifically.

2 Q. Have you read any of his books?

3 A. I have not.

4 Q. Do you know how many books he's published?

5 A. I do not.

6 Q. While you were at the academy, did you pursue any

7 continuing education with regard to marijuana?

8 A. While I was at the academy?

9 Q. Right.

10 A. You mean --

11 Q. While you were at the DEA, I'm sorry.

12 A. What do you mean by "continuing education"?

13 Q. Seminars, training sessions, conferences.

14 A. Yes.

15 Q. Other than what you have mentioned so far?

16 A. Well, I mentioned the academy, and then I mentioned

17 whenever I would go to conferences they were training

18 conferences, so I attended the classes. And then a three-day

19 indoor marijuana investigator's school.

20 Q. Is it fair to say, then, it sounds like you've gone to less

21 than five conferences, seminars, training sessions, with regard

22 to marijuana?

23 A. I -- I don't recall how many CAMP conferences I went to.

24 Yeah, I'd say less than five.

25 Q. What experience do you have with marijuana cultivation

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Tuey - Cross / Greenberger

1 other than the raids you've been involved in and the three-day

2 conference you went to? In other words, live plants, any

3 experience?

4 A. Besides executing search warrants at cultivation sites?

5 Q. Right.

6 A. Like had I actually grown marijuana?

7 Q. Yes.

8 A. No, I've never actually grown marijuana.

9 Q. Have you ever gone to marijuana grows to further your
10 understanding in terms of the life cycles of the plants?

11 A. That happened every time I -- I executed a search warrant.
12 Where I was participating in a search warrant at a grow.

13 Q. But you never in your training and experience aside from
14 the days that you went and executed the raid had an opportunity
15 to see plants growing from the inception to fruition?

16 A. I believe it would have been contrary to DEA if I actually
17 went to a marijuana grow for that purpose.

18 Q. Well, wouldn't you agree that would have been -- would
19 assist you in your training?

20 MR. BEVAN: Vague and ambiguous.

21 THE COURT: Sustained.

22 BY MS. GREENBERGER:

23 Q. How long had you been involved in this investigation of
24 Mr. Rosenthal prior to the execution of the search warrant?

25 A. I don't recall exactly. I participated in certain

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1 activities associated with this investigation.

2 Q. Can you explain?

3 A. Surveillance.

4 Q. What -- what time period prior to the raid, which would
5 have been on February 12, 2002?

6 A. It would be -- have been a few months before, I really
7 don't recall.

8 Q. So for several months you were investigating prior to the
9 execution of the warrant?

10 A. I personally was not investigating Mr. Rosenthal.

11 Q. What involvement did you have besides surveillance prior to
12 the execution of the warrant?

13 A. That was it.

14 Q. What agencies were you working with prior to the execution
15 of the search warrant on this investigation?

16 MR. BEVAN: Irrelevant, objection.

17 THE COURT: Well, what agencies he was working with?

18 MS. GREENBERGER: Right.

19 THE COURT: You mean what agencies did he -- did
20 he -- was he employed by --

21 MS. GREENBERGER: Well, in his --

22 THE COURT: -- or other agencies?

23 MS. GREENBERGER: In his capacity as a DEA agent,
24 what agencies were you working with in this investigation?

25 THE COURT: Sustained.

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Tuey - Cross / Greenberger

1 BY MS. GREENBERGER:

2 Q. Were you the main case agent?

3 A. I was not.

4 Q. Who was giving you the marching orders in this case?

5 A. Special Agent Pickette was the -- was the lead case agent
6 on this investigation.

7 Q. Did you have directives from the Federal Government out of
8 Washington, D.C.?

9 THE COURT: Sustained.

10 MR. BEVAN: Irrelevant.

11 BY MS. GREENBERGER:

12 Q. You didn't contact local authorities like the Oakland
13 Police Department or Alameda Sheriff's Department to get
14 authorizations for this raid and seizure, did you?

15 THE COURT: Sustained.

16 MR. BEVAN: Objection.

17 THE COURT: It's irrelevant.

18 BY MS. GREENBERGER:

19 Q. Did you know that Mr. Rosenthal began writing and
20 publishing books --

21 MR. BEVAN: Irrelevant, Your Honor.

22 MS. GREENBERGER: Can I finish my question?

23 THE COURT: Well, I don't think so. I mean, it
24 seems to be going into an area that is not relevant. At least
25 at this point it's not relevant. So why don't we question him

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1 on those things that he testified to, about those things he
2 testified to, and then if there are other areas, I'll hear an
3 offer of proof outside the jury as to whether or not it's
4 relevant.

5 We might as well spend the next 15 minutes on
6 cross-examining the witness as to what he actually testified to
7 today. And -- well, basically today, yesterday.

8 BY MS. GREENBERGER:

9 Q. How many times have you been --

10 MS. GREENBERGER: Thank you, Judge.

11 BY MS. GREENBERGER:

12 Q. How many times have you been to 1419 Mandela prior to
13 execution of the search warrant?

14 A. I don't recall. I don't think I had ever been there prior

15 to that day.

16 Q. Well, didn't you just testify you were doing surveillance
17 there?

18 A. No.

19 MR. BEVAN: Misstates his testimony.

20 BY MS. GREENBERGER:

21 Q. So you were -- just for clarification, you were doing
22 surveillance other than at 1419?

23 A. We were doing surveillance as part of the investigation.

24 Q. The first time you were ever at 1419 Mandela, then, would
25 have been on February 12th, 2002?

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1 A. I believe so, yes.

2 Q. Taking you back to February 12th, 2002, was it a
3 coincidence that the same day you scheduled the raid on 1419
4 Mandela that the DEA Tzar Asa Hutchinson from Washington,
5 D.C. --

6 THE COURT: Well, I'm going to interrupt here.

7 Okay, ladies and gentlemen maybe, we'll take our
8 recess now. Remember the admonition given to you.

9 We'll be in recess until 10:00 o'clock. Don't
10 discuss the case, allow anyone to discuss it with you, form or
11 express any opinion.

12 (Jury out at 9:46 a.m.)

13 THE COURT: Okay, let the record reflect the jurors
14 have left.

15 Ms. Greenberger, would you finish your question the
16 one that you were going to ask?

17 MS. GREENBERGER: Was it a coincidence the same day
18 you scheduled the raid on 1419 Mandela that DEA Asa Hutchinson

19 from D.C. scheduled a press conference in San Francisco?

20 THE COURT: Okay. Now, why is that relevant?

21 Assuming it happened. I have no idea whether it happened or

22 not. Why is it relevant?

23 MS. GREENBERGER: It's relevant -- bias, interest

24 and motive.

25 THE COURT: How does it go to bias, interest and

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1 motive?

2 Mr. Figueroa, you are coming up and giving her

3 answers. Do you want to address it?

4 Now, apparently, it's very unusual, you see, where

5 one lawyer does the questioning and another lawyer has to come

6 up and explain why the question is relevant. I don't usually

7 permit it.

8 MR. FIGUEROA: Thank you, Your Honor.

9 THE COURT: Who is in charge of the questioning, you

10 or her?

11 MR. FIGUEROA: Ms. Greenberger.

12 THE COURT: Then you have a seat and sit down and

13 remain seated.

14 Okay. Ms. Greenberger, why is it relevant?

15 MS. GREENBERGER: It goes to the motive of this

16 prosecution and --

17 THE COURT: Motive of the prosecution is irrelevant.

18 What's next?

19 MS. GREENBERGER: This witness' knowledge.

20 THE COURT: Of what?

21 MS. GREENBERGER: Of this activity.

22 THE COURT: Of what activity?

23 MS. GREENBERGER: It goes to who this agent was
24 getting his directives from.

25 THE COURT: So what? Say it was the President of

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1 the United States telling him what to do, so what? Why is it
2 relevant? That is my question. Why is it relevant?

3 You see, we're not going to spend any time on this
4 case on matters that are not relevant. We'll spend as much
5 time as necessary on matters that are relevant unless they are
6 duplicative or a waste of time.

7 But tell me why this line of questioning is
8 relevant.

9 MS. GREENBERGER: We believe the evidence will show
10 that Mr. Rosenthal was being targeted based on his beliefs.

11 THE COURT: Okay. Fine. But that's not relevant in
12 the case, it may be relevant for a motion. It may be relevant
13 otherwise. But it's not a relevant consideration for the jury
14 to consider.

15 Now, are you aware of that? Have I made that clear
16 or not?

17 MS. GREENBERGER: Understood.

18 THE COURT: Okay. So they have -- I'm telling you
19 outside of the presence of the jury to, please, go through all
20 of your questions and don't ask questions that are -- that I've
21 already ruled to be irrelevant.

22 And, Ms. Greenberger, I will allow you on Friday
23 afternoon to put anything on the record you want to in terms of
24 questions that you think that I should have permitted in front
25 of the jury. I'm not foreclosing you from making a record,

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1 okay?

2 MS. GREENBERGER: Understood.

3 THE COURT: We are in recess until --

4 MR. BEVAN: Just for the record, Your Honor. One of
5 the books which she asked the witness about was Why Marijuana
6 Should Be Legal. It is sitting here and that is a topic, Your
7 Honor, that is encompassed within your preclusion.

8 THE COURT: It is. And, please, don't show any of
9 these books in front of the jury, all right?

10 Thank you.

11 THE WITNESS: Thank you, sir.

12 THE COURT: We are in recess.

13 (Recess taken at 9:51 a.m.)

14 (Proceedings resumed at 10:05 a.m.)

15 THE COURT: Let the record reflect all parties are
16 present.

17 (Jury in at 10:05 a.m.)

18 THE COURT: Okay. Let the record reflect all jurors
19 are present.

20 Ms. Greenberger, you may proceed.

21 MS. GREENBERGER: Thank you, Judge.

22 BY MS. GREENBERGER:

23 Q. What time did you perform your search warrant execution at
24 1419 Mandela?

25 A. May I refer to my report just to --

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1 Q. Yes.

2 A. 6:05 a.m.

3 Q. Mr. Rosenthal was not at that location when you arrived?

4 A. No.

5 Q. In fact, you never saw him at that location during that
6 date?

7 A. I'm sorry. One more time.

8 Q. I said, in fact, you never saw him at that location on that
9 date.

10 A. No.

11 Q. How many agents were you with when you entered?

12 A. Can I refer to my report?

13 Q. Yes.

14 A. Thank you. Including myself, approximately 11.

15 Q. Did that comprise all of the DEA agents in your office?

16 A. No.

17 Q. Were you aware when you entered Mandela that you were
18 entering an experimental nursery?

19 MR. BEVAN: Assumes facts not in evidence, Your
20 Honor.

21 THE COURT: Sustained.

22 MR. BEVAN: Your Honor, could I ask the courtroom
23 deputy to turn up the microphone? I'm having trouble picking
24 up the questioning.

25 THE COURT: Oh, yeah.

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Tuey - Cross / Greenberger

1 And, again, let me remind the jury that a question
2 to which an objection has been raised and the objection has
3 been sustained is a question that you are instructed to
4 disregard. It's not a matter that you are to consider as
5 having been proven or in evidence.

6

Go ahead.

7

BY MS. GREENBERGER:

8

Q. You prepared a video in this case; is that correct?

9

A. I did.

10

Q. You narrated the video?

11

A. Yes.

12

Q. When we listened to it, I heard laughter in the background,

13

is that of the other agents?

14

A. I wouldn't recall.

15

Q. Is there anything that you said in the video upon

16

reflection of seeing it yesterday that you would correct as

17

inaccurate?

18

A. Are you making a specific reference to something or --

19

Q. In general.

20

A. After reviewing it, I -- you know, I really -- at the time

21

I made the narration, I thought everything was accurate.

22

Q. Do you stand by your statement that your narration

23

accurately depicts your observations?

24

A. At the time, yes.

25

Q. You testified yesterday that the video taken depicted the

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Tuey - Cross / Greenberger

1

first walk-through by the DEA; is that correct?

2

A. I'm sorry, what do you mean the first walk-through?

3

Q. You said -- you testified yesterday that you were filming

4

the video upon your entry to preserve the integrity of 1419

5

Mandela?

6

A. No, I didn't.

7

Q. Well, let me ask you this: How much time were you there

8

before you began filming?

9

A. I don't recall. It was soon after we made entry and made a

10 protective sweep of the location.

11 Q. The video was taken soon after?

12 A. Yes.

13 Q. The signs that were posted on the rooms were not there
14 before you made entry, were they?

15 A. You're referencing to which signs?

16 Q. The numbering signs.

17 A. No.

18 Q. You put them up?

19 A. Yes.

20 Q. Did you do that personally?

21 A. You know, I don't recall.

22 Q. The truth is the video was not the first walk-through,
23 because you put the signs up, right?

24 A. We had already entered the location and made a protective
25 sweep.

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Tuey - Cross / Greenberger

1 Q. And then you also put the signs up before you began
2 filming?

3 A. Yes.

4 Q. What else did you do before you began filming?

5 A. That was all.

6 Q. In that protective sweep, you didn't find any guns, did
7 you?

8 A. No.

9 Q. If you had, you would have reported that, right?

10 A. Yes.

11 Q. You didn't find any weapons, did you?

12 A. Other than firearms?

13 Q. Any -- yeah, other than the firearms that you didn't find,
14 you didn't find any weapons there?
15 A. Not that I would consider -- I mean, there were scissors,
16 could be a weapon.
17 Q. There were no people there?
18 A. No.
19 Q. Can you tell us exactly how many lights were on when you
20 entered Mandela Parkway?
21 A. You are talking about, like, in general or you are talking
22 about -- which lights were you referring to?
23 Q. Well, let's talk about the lights on the plants.
24 A. Okay. Yeah, I do not recall.
25 Q. Did you make any note on that?

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Tuey - Cross / Greenberger

1 A. I made a note of a room where there were several light
2 hoods that weren't operating.
3 Q. Do you have any memorialization of which lights were on
4 which plants?
5 A. You are talking about the specific light hoods over the
6 specific plant?
7 Q. Correct.
8 A. No.
9 Q. Isn't it true that you did not find one budding plant in
10 the nursery?
11 A. I believe so, yes.
12 Q. In fact, you never saw any budding plants at Mandela ever?
13 A. Well, I was only there that day, so...
14 Q. Well, on that day?
15 A. No, I answered that.
16 Q. You've done approximately 50 marijuana raids, you said?

17 A. More than 50, I just used that as a minimum.
18 Q. Fifty indoor?
19 A. Yes.
20 Q. And isn't it true that the valuable portion of the
21 marijuana plant is the bud?
22 A. Yes.
23 Q. That's the cash crop?
24 A. Yes.
25 Q. Isn't it also true that most growers that you've identified

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Tuey - Cross / Greenberger

1 in your raids maximize the space where they are growing in
2 order to have more product?

3 MR. BEVAN: Objection. Irrelevant.

4 THE COURT: I'll allow it.

5 THE WITNESS: I would believe that would be true for
6 any type of production system, yes.

7 BY MS. GREENBERGER:

8 Q. That's not what you observed at Mandela, correct?

9 A. You're talking about --

10 Q. In terms of the maximization of the space for growing
11 marijuana.

12 A. I saw rooms that were used to grow and rooms that looked
13 like they used to have grows that weren't being used anymore.

14 Q. Well, isn't it true that there were only three rooms that
15 you observed at Mandela where there were grows?

16 A. I believe so.

17 Q. Do you want to refresh your recollection?

18 A. Would you mind?

19 Q. Of course not.

20 A. Thank you. According to my report there were three rooms,
21 yes.
22 Q. You were aware -- thank you -- did you draw this map?
23 A. I created it on a computer program.
24 Q. And is it meant to be a replica of 1419 Mandela?
25 A. Not exact. It's more of -- it's not to scale, so it's not

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Tuey - Cross / Greenberger

1 an exact replica.
2 Q. And just so we can get familiar with the dimensions, the
3 square footage of Mandela was approximately 1500 square feet?
4 A. I never recorded the square footage.
5 Q. Well, in your recollection, how large was it?
6 A. I wouldn't even venture a guess.
7 Q. Half the size of this courtroom?
8 A. I -- I really don't remember.
9 Q. Does 1500 square feet sound about right?
10 A. I don't know.
11 Q. There were no marijuana plants or clones in room 2; is that
12 correct?
13 A. No. I don't think so.
14 Q. No?
15 A. Can I check my report?
16 Q. Please.
17 A. Thank you. No, there were not.
18 Q. There were no marijuana plants found in room 3; is that
19 correct, or clones?
20 A. Room 3?
21 Q. Yes.
22 A. No.
23 Q. There were no marijuana plants or clones found in room 8;

24 is that correct?

25 A. May I check my report?

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Tuey - Cross / Greenberger

1 Q. Yes.

2 A. No.

3 Q. Nor room 8A, no marijuana plants or clones found there?

4 A. No.

5 Q. What about room 7?

6 A. No.

7 Q. What about room 11?

8 A. No.

9 Q. How about room 4?

10 A. No.

11 Q. Room 5?

12 A. I don't recall what was in room 5.

13 Q. So you would have recorded it if you did find --

14 A. Yeah, if I had found the plants, I would have recorded it,
15 yes.

16 Q. And your report doesn't indicate that?

17 A. No.

18 Q. So it's a fair statement that only about 25 percent of the
19 total space at Mandela was being used for marijuana or clones?
20 Marijuana plants?

21 A. You know, I don't know. I know what room we found the
22 clones in. I wouldn't know what the percentage of the entire
23 square footage of the location it was.

24 Q. Well, since you were there and we were not, can you give us
25 your best estimate?

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Tuey - Cross / Greenberger

1 A. Like I said, I never measured the interior space of the
2 location.
3 Q. Well, let's talk about that.
4 A. Okay.
5 Q. Room 6 had mother plants in it, correct?
6 A. Yes.
7 Q. And it had four beds of mother plants, correct?
8 A. Can I check my report?
9 Q. Yes.
10 A. Okay. I have two beds built in two tiers.
11 Can we see a photo of it? I know there were beds of
12 plants, I don't remember if there were four.
13 Q. One moment.
14 Can you see?
15 A. Can I step down?
16 Q. Certainly.
17 A. Thank you.
18 Q. Showing you what's been marked as Plaintiff's Exhibit No.
19 9, can you show the ladies and gentlemen of the jury room 6.
20 A. It would have been photos A and B.
21 Q. A and B?
22 A. Yes. Okay.
23 Q. And can you show us the beds that the marijuana plants were
24 growing in?
25 A. Well, this is where they were growing.

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Tuey - Cross / Greenberger

1 MR. BEVAN: Can't hear the witness.

2 THE WITNESS: I'm sorry, this is where they were

3 growing.

4 BY MS. GREENBERGER:
5 Q. Isn't it true that the beds were 4 feet by 13 feet long?
6 A. Can I check my report? I don't know if I documented that
7 or not.
8 Q. Yes.
9 A. What I have in the report is that they ranged in size
10 between 12 square feet to 20 square feet.
11 Q. The beds?
12 A. Yes. The black tubs.
13 Q. And that would be what the marijuana was contained in?
14 A. Yeah. These right here.
15 Q. Do you have any reason to disagree that the actual bed size
16 was 4 feet -- 4 feet times 13 feet?
17 A. I wouldn't recall. I have what I have in the report.
18 Q. How significant in your investigation was it to preserve
19 the evidence as you saw it?
20 A. Preserve -- are you talking about preserving the drug
21 evidence or --
22 Q. Preserving your observations in room 6.
23 A. That's why I videoed and photoed.
24 Q. Is it your testimony that you didn't take measurements?
25 A. Not specific measurements, no.

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Tuey - Cross / Greenberger

1 Q. Can you give the ladies and gentlemen of the jury an idea
2 of the size of room 6?
3 A. I really can't recall.
4 Q. Is it a fair statement that the plants in the beds in room
5 6 were approximately 52 square feet?
6 A. I'm sorry, the beds?
7 Q. The size of the beds collectively.

8 A. Like I said, I have the measurements in the report and that
9 is what I stated earlier.

10 Q. And what you remember as you sit here today, can you give
11 us some idea what you remember in terms of the size? Is that
12 pretty consistent with your recollection around 50 square feet?

13 A. I don't recall.

14 Q. Well, it wasn't a large room, was it?

15 A. It was a fair-sized room. I mean, like large like this?

16 Q. Comparative to --

17 A. Comparative to this?

18 Q. -- to this room?

19 A. This is a large room. It was a smaller room than this.

20 Q. Was it smaller or larger than the jury box?

21 A. That I couldn't recall.

22 Q. Isn't it true in your experience with marijuana plants that
23 the plants grow up?

24 A. Yes.

25 Q. And in growing up, they send shoots up?

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Tuey - Cross / Greenberger

1 MR. BEVAN: I'm sorry, I didn't hear that.

2 MS. GREENBERGER: They send shoots up.

3 THE WITNESS: What do you mean by shoots?

4 BY MS. GREENBERGER:

5 Q. Think of a tomato plant, they grow up with shoots sprouting
6 out, spikes?

7 A. Yeah. Are you talking about the leaves? Is that what you
8 are talking about?

9 Q. Right.

10 A. Yeah, the leaves.

11 Q. And the growth rises above the canopy; isn't that correct?

12 A. What -- I'm sorry, what canopy are you talking about?

13 Q. Let's look at 9A. This is in room 6, right?

14 A. Yes.

15 Q. Isn't your experience in marijuana grows that when you
16 observe plants growing that the plants are growing up above --
17 we'll call this the canopy and they are growing up above the
18 canopy?

19 A. I guess I'm not understanding how you define a canopy.

20 Q. Canopy would be the span of the plants from their top
21 horizontally down.

22 A. Top horizontally.

23 Q. Looking backwards.

24 A. Okay. Yeah, I don't know how to answer your question.

25 Q. Well, doesn't it appear to you that all of the plants are

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Tuey - Cross / Greenberger

1 flat at the top? In other words, no evidence of shoots or
2 spikes are evident?

3 A. To me, they are the height they are, so...

4 Q. Well, is it your testimony that those plants just grew like
5 that? With -- without being trimmed or hedged by anybody?

6 A. No.

7 Q. No, that's not your testimony?

8 A. No.

9 Q. And you know in your experience with marijuana that
10 clippings and cuttings are always taken from the top?

11 A. I never testified to that.

12 Q. Well, what is your testimony to where the clippings are
13 taken from?

14 A. Based on my experience with mother plants, I never have

15 actually personally taken a clipping, but the mother plants we
16 always saw usually had stems that were more exposed than plants
17 that were reserved for budding.

18 Q. Well, so to answer my question, what is your experience
19 where the clippings are taken from?

20 A. I've never taken a clipping. I've never even cultivated
21 marijuana.

22 Q. So you don't have any reason to dispute that room 6
23 contains mother plants where clippings were taken from the top?

24 A. I don't know where they took the plants from -- I don't
25 know where they took the cuttings from.

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Tuey - Cross / Greenberger

1 Q. Well, is it a fair statement that when you look at 9A that
2 all of the plants are even on the top?

3 A. The angle from which the picture is taken is down, so I
4 can't really say that they were completely even.

5 Q. Well, what do you remember?

6 A. I remember there were plants in the room. I remember the
7 fact that the stems were more generally exposed than plants
8 that are generally reserved for budding.

9 Q. Well, was it clear to you when you entered room 6 that
10 these were mother plants?

11 A. Based on my experience, yes.

12 Q. And just for edification of the jury, mother plants are
13 plants that are not brought to harvest, correct?

14 A. Yes.

15 Q. And how much light is put on the mother plants to keep them
16 in that phase?

17 A. I -- I don't know the exact methods that you would keep it

18 from harvesting.

19 Q. Well, do you know that depending on what you are going to
20 do with the plants there are different growth cycles?

21 A. Yes.

22 Q. The lights affect the growth cycles?

23 A. Yes.

24 Q. And what is your understanding of how mother plants are
25 kept in the state that they are kept in?

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Tuey - Cross / Greenberger

1 A. My understanding is that they are -- never having done
2 this, my understanding basically is that there are certain --
3 certain nutrient factors you can use to keep a plant from
4 harvesting. They have certain light levels you can use. But
5 that's what I know.

6 Q. Isn't it true that the light cycle to keep the mother
7 plants in the state they're in so you can obtain cuttings from
8 them is 24 hours of light?

9 A. I can't say -- I can't confirm that.

10 Q. Is it true or false that budding plants are on a particular
11 light cycle?

12 A. Yes.

13 Q. Do you know what that light cycle is?

14 A. Generally, from my experience, we notice that the timers
15 were 12 hours on and off.

16 Q. Isn't it true that the lights on the plants in room 6 were
17 not 1000-watt high-pressure sodium bulbs as you testified to
18 yesterday, but were actually 600-watt lamps?

19 A. I never testified to the voltage.

20 Q. Does your report reflect what types of high-pressure sodium
21 bulbs were being used?

22 A. May I check my report?

23 Q. Of course.

24 A. Thank you. In my report, I indicate that they vary in

25 wattage from 600 to a thousand.

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Tuey - Cross / Greenberger

1 Q. Do you have any specific notes on what bulbs were being
2 used in this room?

3 A. Just what I have in the report.

4 Q. So if I'm telling you that 600-watt lamps were being used
5 in room 6, do you have any basis to dispute it?

6 A. Well, according to my report, they varied from 600 to 1000.

7 So...

8 Q. Did you check the wattage on these bulbs?

9 A. No. I mean, I looked at some of them.

10 Q. Did you seize them?

11 A. Yes, we did.

12 Q. Do you have any notes indicating which bulbs were in which
13 rooms?

14 A. No. I'm sorry, you mean the specific bulb --

15 Q. Right.

16 A. -- in a specific hood?

17 Q. In a specific room, all of that, yes.

18 A. If you look on the light hoods, I would have -- I believe I
19 would have indicated on the light hood where they came from.

20 So if the bulb is attached to that hood, it came from the
21 particular room.

22 Q. If we had the light hoods here today, would you be able to
23 identify which bulbs were in the light hoods in room 6?

24 A. If the light hood indicated which room they were and

25 assuming the bulb survived after five years, possibly.

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Tuey - Cross / Greenberger

1 Q. Did you make notations so that could be reconstructed?

2 A. I made notations to the light hoods.

3 Q. Did you seize all the light hoods from room 6?

4 A. I believe so, yes.

5 Q. And can you tell us based on your seizure of the light

6 hoods from room 6 which bulbs were in which light hood?

7 A. Again, assuming the bulb survived, the hood would have an

8 evidence marking which you can match it to my report to show

9 which room the bulb came from.

10 Q. Well, let's look at this one.

11 Showing you what's been marked, I believe, and

12 introduced as Exhibit 16, what can you tell us about this light

13 hood?

14 A. Can I refer to my report?

15 Q. Yes.

16 A. According to my report, this one was seized simply from

17 1419 Mandela Parkway.

18 Q. Is this your writing that indicates room 6?

19 A. I -- I don't recall if that was my writing or not.

20 Q. Just so we are clear, you assigned the room numbers to the

21 rooms?

22 A. Yes, I did.

23 Q. And does that light hood appear to be from room 6?

24 A. Yes.

25 Q. So looking at the light hood, are you able, then, to

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Tuey - Cross / Greenberger

1 reconstruct that there were 600-watt lamps not 1000

2 high-pressure sodium bulbs?

3 A. I can tell you if we look at the voltage of this bulb, I
4 can tell you what wattage this bulb was.

5 Q. Could you?

6 A. This one was 600.

7 Q. 600?

8 A. Yes.

9 Q. And this is meaningful because depending on the lighting
10 that affects the plants, the plant growth, the plant cycle?

11 A. Well, it's meaningful to the cultivator, yeah.

12 Q. Do -- do all of the plants reflected in Exhibit 9 reflect
13 what you observed in room 6?

14 A. I'm sorry, in what sense?

15 Q. Well, I just want to make sure I understand that we are
16 talking about the right rooms.

17 Are all the plants depicted in Exhibit 9 your
18 observations or still photos from room 6 or is it just A and B?

19 A. It's just A and B.

20 Q. And next door to that, is that room 9?

21 A. You mean on the photo?

22 Q. Yes.

23 A. Yes.

24 Q. You did not observe any budding plants in room 9, correct?

25 A. No. I don't believe so.

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Tuey - Cross / Greenberger

1 Q. And the beds in room 9 were 4 by 4 feet; isn't that true?

2 A. May I check my report?

3 Q. Yes.

4 A. I did not record a measurement of the bed size.

5 Q. Well, do you remember that there were four beds there?

6 A. Yes, in my report there were four beds.

7 Q. And do you remember that each bed was 4 by 4?

8 A. I don't.

9 Q. Was there -- well, strike that.

10 Fair to say all the plants you observed in room 9

11 were mother plants as well?

12 A. No.

13 Q. That's not what you observed?

14 A. No.

15 Q. What stage were the plants in, then?

16 A. Like what stage of their development or --

17 Q. In room 9.

18 A. I -- you know, I don't know the exact terminology.

19 Q. You've never identified these plants as any plants that had

20 flowers or buds on them, have you?

21 A. No.

22 Q. And, in fact, when you went into the room, it was clear in

23 your mind the plants were not budding?

24 A. Yes.

25 Q. Isn't it true that the lighting on the plants in room 9

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Tuey - Cross / Greenberger

1 were 600 watts, not 1000?

2 A. May I check my report?

3 Q. Yes.

4 A. I have in my report that the wattage ranged from 600 to a

5 thousand.

6 Q. In that particular room or just in general?

7 A. In that particular room.

8 Q. How many lights were there in that room?

9 A. I wrote in my report that there was a light hood providing
10 light to each bed, so four lights.

11 Q. And are you able to tell us which lights in that room had
12 the thousand-watt bulbs?

13 A. Again, if I saw the hoods that we have -- had taken from
14 room 9.

15 Q. I'm sorry?

16 A. Again, if I saw the hoods that we had taken from room 9,
17 and assuming the bulbs had survived over the past five years,
18 we could probably surmise what wattage they were.

19 Q. Would it surprise you to learn that each bulb in room 9 was
20 actually a 600-watt versus a thousand?

21 A. Again, in my report I had them as ranging from 600 to a
22 thousand, so...

23 Q. Okay.

24 So it would surprise you?

25 A. Well, in the report I say 600 to a thousand. So...

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Tuey - Cross / Greenberger

1 Q. Do you stand by your report as being accurate in terms of
2 that particular observation?

3 A. As far as I remember.

4 Q. What room did you observe the timer in?

5 A. Excuse me, may I refer to my report?

6 Q. Yes.

7 A. Thank you. There was a timer in room 6.

8 Q. Were you aware the timer only had one hand on it?

9 A. I don't recall.

10 Q. Were you aware the timer was not functioning?

11 A. Don't recall.

12 Q. Did you see the timer move while you were there? No?

13 A. No.
14 Q. Would it surprise you to learn the timer only had one hand?
15 A. I answered that.
16 Q. Would it surprise you to learn that?
17 A. I didn't observe, so...
18 Q. Did you examine it?
19 A. I just saw there was a timer and where it was set.
20 Q. Did you see it move while you were there?
21 A. I didn't keep an eye on it, no.
22 Q. Did you seize it?
23 A. Can I check my report?
24 Q. Sure.
25 A. No, doesn't look like I seized the timer.

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Tuey - Cross / Greenberger

1 Q. Wouldn't it have been important to check the timer to see
2 if it was functioning?
3 A. For a cultivator, yeah.
4 Q. Well, what about for you in terms of your investigation and
5 observations with regard to timers and light cycles?
6 A. My concern was the plants at the location.
7 Q. So as you sit here today, you don't know if it was
8 functioning or not?
9 A. No.
10 Q. Showing you what's been marked as Defendant's Exhibit 201.
11 A. Okay.
12 Q. Do you recognize this?
13 A. No.
14 Q. Does it appear consistent with what you saw plants growing
15 in at Mandela?

16 A. I don't recall specifically.

17 Q. What about the size of it?

18 A. I don't recall specifically.

19 Q. Did you seize any of the containers?

20 A. Can I check my report?

21 Q. Sure.

22 A. No, I didn't seize any of the containers.

23 Q. When you were there you had an opportunity to look at the
24 containers when you were seizing the plants, right?

25 A. I'm sorry.

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Tuey - Cross / Greenberger

1 Q. I said while you were there you had an opportunity to look
2 at the containers when you were seizing the plants, correct?

3 A. I saw them, yeah.

4 Q. And does that container reflect what you observed the
5 plants growing in in room 6 and 9?

6 A. Like I said, I don't specifically recall.

7 Q. Any reason to disagree that they?

8 THE COURT: Well, we have sort of done this enough,
9 I mean, he can't identify them and so you can't ask it a
10 different way. He can't identify it. If somebody else can,
11 that's fine, but we are not going to spend a lot of time on
12 theoretical -- so take the container away.

13 BY MS. GREENBERGER:

14 Q. How did you determine what you believed would be important
15 evidence to seize?

16 A. I would always take the drug evidence and anything that
17 would support the cultivation of -- some elements of the
18 cultivation of the evidence would prove the people were there,
19 names, telephone numbers, anything indicative of sales.

20 Q. You seized a number of stakes?

21 A. Yes.

22 Q. Do these represent some of the stakes that you seized?

23 A. Yes.

24 Q. Do you remember where you seized a -- the specific stakes
25 from?

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Tuey - Cross / Greenberger

1 A. They are written on the -- on the labels on the envelopes.

2 Q. Some of the stakes have Medifarm stakes; is that correct?

3 A. Yes.

4 Q. Are the Medifarm stakes in any way connected to Medicare?

5 MR. BEVAN: To Medicare?

6 MS. GREENBERGER: Correct.

7 THE WITNESS: I have no idea.

8 BY MS. GREENBERGER:

9 Q. Do you know who produced the Medifarm stakes?

10 A. No.

11 Q. Do you know who the Medifarm stakes belong to?

12 A. No.

13 Q. Many stakes were seized; is that correct?

14 A. Yes.

15 Q. What is the significance of the different stakes?

16 A. For me, they seem to indicate the particular strains of
17 marijuana that were being grown.

18 Q. Is this done for maintaining quality control?

19 A. Yeah. It's an identification of the product.

20 Q. Isn't it true that different stakes are used for research
21 study, experimentation and viability?

22 A. I wouldn't know about that.

23 Q. Would you agree that different strains are utilized in the
24 plants for different marijuana properties?

25 A. I have never smoked any of the strains. My understanding

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Tuey - Cross / Greenberger

1 is just that some strains are more popular and they may contain
2 more THC. It's a product issue.

3 Q. And wouldn't you agree some strains are more beneficial in
4 treating cancer, HIV, chronic pain and others?

5 MR. BEVAN: There has been a specific ruling on
6 that, Your Honor.

7 THE COURT: Sustained.

8 The jury is admonished to disregard it.

9 I would like the court reporter to note the
10 question.

11 BY MS. GREENBERGER:

12 Q. Showing you what's been marked as Exhibit 9, 7 of 8, can
13 you tell us what is depicted in A?

14 A. It's a roll of the stakes.

15 Q. And what room was that located in?

16 A. I believe it was room 3.

17 Q. Do you want to check your report?

18 A. Yeah, if you don't mind. Thanks.

19 I don't specifically reference it in the report but
20 just looking at it and reviewing the video, it was room 3.

21 Q. And that room consisted of supplies?

22 A. A table, work area, supplies, yeah.

23 Q. Do you remember the dimensions of that room?

24 A. I don't.

25 Q. You didn't make any notations?

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1 A. No.

2 Q. Is room -- is what's depicted in B on that same chart, is
3 that the same room or a different room?

4 A. That would be the same room.

5 Q. Room 3?

6 A. Yes.

7 Q. And there's multiple garbage bags in that room?

8 A. Yes.

9 Q. And you left those bags behind because you knew they were
10 comprised of trash?

11 A. They looked to be decomposing.

12 Q. Do you know if scrap from a leaf is able to be composted?

13 A. You know, I don't.

14 Q. You mentioned in the video yesterday that one of the bags
15 appeared to have been frozen; is that your testimony or your
16 what you said in the video?

17 A. Yes.

18 Q. Do you recall that?

19 A. Yes.

20 Q. Is it your testimony that it appeared to be frozen based on
21 the weather conditions at the time?

22 A. Weather, and just the look of it. It looked, you know --

23 Q. Well, if I told you the weather on February 11, 2002, in
24 Oakland was 62 degrees Fahrenheit, would that change your
25 opinion?

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Tuey - Cross / Greenberger

1 A. At what time of day was it 62 degrees?

2 Q. This would be -- well, let's say, 11:53 p.m. on the night
3 before you went there. The temperature was 48.9 degrees

4 Fahrenheit.

5 MR. BEVAN: Object to the form of the questions.

6 THE COURT: Allow it.

7 BY MS. GREENBERGER:

8 Q. Would that change your testimony?

9 THE COURT: You mean, whether it appeared to be
10 frozen?

11 MS. GREENBERGER: Right.

12 THE COURT: I don't understand how it would change
13 the testimony.

14 Are you asking --

15 BY MS. GREENBERGER:

16 Q. Well, do you believe it could have been frozen from the
17 night before if it was 48 degrees at 11:53 p.m.?

18 A. I don't know if it was in that state from the night before.

19 Q. If I told you, just to follow up, that on February 12th --

20 THE COURT: Counsel, he didn't say that it was
21 frozen from the night before -- he said it appeared to be
22 frozen. That was his testimony, right? At some earlier time,
23 previous time, it had appeared to have been frozen.

24 Is that correct? Maybe I misheard you.

25 THE WITNESS: Yeah, it looked like there was frost

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Tuey - Cross / Greenberger

1 on it. I don't know when it happened.

2 BY MS. GREENBERGER:

3 Q. So there appeared to be frost on it when you looked at it?

4 A. That is what it looked like at the time.

5 Q. Well, if you told you at 6:53 a.m. it was 44 degrees, would
6 your testimony still be it appeared to have frost on it?

7 A. Again, I don't know when the state of that plant happened
8 or -- I remember that morning was cold, I was cold.
9 Q. You just testified "state of the plant," isn't it true that
10 it was trash comprised of leaves and stems?
11 A. It looked to be decomposing, so it looked to be garbage to
12 me.
13 Q. Did it feel cold to touch?
14 A. I don't recall.
15 Q. Could it have been fungus and mold versus ice that you
16 observed or frost?
17 A. It could have been. I don't know.
18 Q. You observed a number of handwritten notes when you were in
19 room 3 and 4, do you recall that?
20 A. Yes.
21 Q. Do you know if James Halloran was the author of those
22 notes?
23 A. I don't know.
24 Q. Do you know who wrote those notes?
25 A. I do not.

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Tuey - Cross / Greenberger

1 Q. No handwriting exemplars were done in regard to those notes
2 to determine the author?
3 A. I -- I don't know about that.
4 Q. Are there any other photos of room 3 depicted in that
5 exhibit --
6 A. I don't --
7 Q. -- that we are looking at?
8 A. I don't think so.
9 Q. In the left-hand corner C, does that appear to be room 4?
10 A. Yes.

11 Q. Can you tell us the dimensions of that room?
12 A. No.
13 Q. Looking at it it appears to be a rather narrow room; is
14 that accurate?
15 A. You know, I really -- I really don't recall.
16 Q. This was another room used for storage it appeared?
17 A. It appears so.
18 Q. There is a shop-vac and a mop?
19 A. Yeah. It's in the picture.
20 Q. Is D next door the same room?
21 A. Yes.
22 Q. A lot of empty space depicted in that photo?
23 A. Storage.
24 Q. Let's look at E. Is that room 1?
25 A. Yes.

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Tuey - Cross / Greenberger

1 Q. And you observed a number of clones in that room?
2 A. Yes.
3 Q. Showing you what's been marked as 40L taken from Exhibit
4 10.
5 MR. BEVAN: Those are the clones.
6 BY MS. GREENBERGER:
7 Q. Where were these seized from?
8 A. 40L. They would have been taken from room 1.
9 Q. Can you tell if they are rooted or unrooted?
10 A. At the time we made that determination, I don't remember if
11 this is the bag with the rooted or unrooted ones.
12 Q. Can you tell us the process when you're in that room that
13 you determined whether the clones were rooted versus unrooted?

14 A. I didn't make that determination while I was in that room.
15 Q. Why not?
16 A. That's not where I processed the clones.
17 Q. Where did you process the clones?
18 A. We took them outside where we had a little more room to lay
19 out the clones and later on, we -- we processed them inside the
20 bed of -- of a rented truck that we were using to haul our
21 evidence.
22 Q. I -- I noticed on the video while you were in that room you
23 were pulling out some of the plants, though.
24 A. Yeah, that was just for video.
25 Q. And then you placed them back in the soil?

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Tuey - Cross / Greenberger

1 A. Yes.
2 Q. And then did you remove the trays with the clones outside
3 or did you just pull them and --
4 A. No, no, no. If you look in the upper photo there with the
5 tarp.
6 Q. Yes, you are referring to what has been marked as Defense
7 202; tell us what we are looking at.
8 A. These are various pictures of the operation.
9 Q. In the right-hand corner you were just referencing.
10 A. Right. That's where we started taking the clones out and
11 we would lay them out on the new tarp. And we had a count and
12 I made a photo and a video record of that count.
13 Q. Are you able to tell from that photograph whether the
14 clones in the right-hand corner were rooted versus unrooted?
15 A. No, that's why I created a video record.
16 Q. And was it you and only you that made that determination?
17 A. Yes.

18 Q. And can you tell us how you made that determination?

19 A. If --

20 Q. In other words, what property did you observe?

21 A. If it looked like there was something growing out at the
22 bottom of the stem of the clone, then I made that determination
23 it was a root structure.

24 Q. So it's your testimony that if there is anything on the
25 stem protruding from the stem, you --

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Tuey - Cross / Greenberger

1 A. Or growing from.

2 Q. -- you counted that as a clone?

3 A. Yes.

4 Q. What about the photograph in the left-hand corner? What
5 does that depict?

6 A. Are you talking about the D13?

7 Q. Yes. But that could be confusing. That is from a prior
8 proceeding. But Exhibit 202 in the bottom left.

9 A. This one here?

10 Q. That's correct.

11 A. That was the same process. Eventually, I just started
12 doing it inside the -- the rented truck. And we were again,
13 photographed the clones, took a count and photograph them.

14 Q. And what's the significance with rooted versus unrooted?

15 MR. BEVAN: Irrelevant.

16 THE COURT: Sustained.

17 BY MS. GREENBERGER:

18 Q. You videoed some bamboo stakes that you found?

19 A. Yes.

20 Q. Isn't it true that there were no bamboo stakes on the

21 mother plants?

22 A. I don't recall, I don't think so.

23 Q. Isn't it true that there were no bamboo stakes on the
24 clones?

25 A. On the clones? No.

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Tuey - Cross / Greenberger

1 Q. Did you see bamboo stakes used on any of the plants you
2 observed when you were at 1419 Mandela?

3 A. You know, I don't recall.

4 Q. What mechanism is used to obtain cuttings?

5 A. Like what tool is used?

6 Q. Yes.

7 A. You know, I've never taken a cutting, so I assume some type
8 of cutting implement.

9 Q. Well, pruning shears?

10 A. If that would produce a cut, sure.

11 Q. In your video you showed us or you described some -- well,
12 what you described as manicuring scissors, correct?

13 A. Yes.

14 Q. And isn't that true that those scissors were pruning shears
15 used to make cuttings with the mother plants?

16 A. I don't know.

17 Q. In room 5 in the video, you described that as a bathroom?

18 A. Yes.

19 Q. And in the bathroom in the trash can you described one
20 dried marijuana leaf?

21 A. I believe so.

22 Q. What's the significance of that leaf?

23 A. I don't recall other than the fact that it was there.

24 Q. Room 7 you described as storage, a ballast, sink, lights?

25 A. Could I check my report?

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Tuey - Cross / Greenberger

1 Q. Sure.

2 A. Thanks. I'm sorry, your question was, again.

3 Q. Room 7?

4 A. Yes.

5 Q. Ballast, sink lights, another room for storage?

6 A. Yeah. I believe it's a hallway and there were ballasts.

7 The ballasts for the lights and the different rooms were all in
8 one part of that -- of that hallway.

9 Q. Can you describe the dimensions of that hallway?

10 A. I don't recall. It was a hallway.

11 Q. What about room 8?

12 A. Um-hum.

13 Q. No plants in room 8?

14 A. No.

15 Q. What's the significance of room 8?

16 A. Well, for me, it was a room, and I believe there were --
17 there was Mylar up on the wall and a couple of light hoods
18 hanging from the ceiling.

19 Q. Nothing growing there?

20 A. No.

21 Q. And is room 10 a hallway versus a room?

22 A. Yes. Room 10 is a hallway.

23 Q. You testified to some documents you described as a grow
24 schedule? Or you mentioned that in the video?

25 A. I believe so, yes.

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Tuey - Cross / Greenberger

1 Q. You don't know when that was written?

2 A. No.

3 Q. You don't know who wrote that?

4 A. No.

5 Q. When you were searching 1419 Mandela, did you have any
6 knowledge about James Halloran's connection to that location?

7 A. No, I didn't.

8 Q. Did you know who James Halloran was?

9 A. I knew he was one of the targets in the investigation.

10 Q. What about Leslie Wilmer?

11 A. I don't recall.

12 Q. Do you know if Leslie Wilmer was supposed to be a partner
13 with James Halloran at 419 Mandela?

14 A. I wasn't the case agent on this case, so I didn't know all
15 the details.

16 Q. Did you execute any other search warrants in connection
17 with this case?

18 A. There were several search warrants executed on that day. I
19 was present only at this one.

20 Q. And that's the only one you were present at in the context
21 of this investigation?

22 A. Yes.

23 Q. Showing you what's been marked as Government's Exhibit 25Z,
24 can you tell the ladies and gentlemen of the jury what that
25 document is?

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Tuey - Cross / Greenberger

1 A. It's an Oakland Fire Department commercial inspection
2 report, fire safety inspection report.

3 Q. A commercial inspection report?

4 A. Yes.

5 Q. From the Oakland Fire Department?
6 A. Yes.
7 Q. Does it have a date on it?
8 A. October 12th, 2001.
9 Q. Was that before or after your execution of the warrant?
10 A. Before.
11 Q. Have you ever seen a commercial inspection report for fire
12 safety at any other marijuana grows you've been to?
13 A. No.
14 Q. Can you tell us whose name is listed as the inspector?
15 A. German Sierra.
16 Q. German Sierra?
17 A. I guess, yeah. I can't read the writing.
18 Q. That's okay.
19 So if I tell you it's German Sierra, you have no
20 reason to dispute that?
21 A. Yeah.
22 Q. And it indicates, doesn't it, that there was an inspection
23 date in October of 2001 and then also a second inspection date,
24 do you see that?
25 A. Yeah, it just says Friday.

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Tuey - Cross / Greenberger

1 Q. And it says second inspection?
2 A. Yeah.
3 Q. And there's a number of items marked in the left-hand
4 column, such as electrical, exits, fire extinguishers, where
5 there are check marks; is that correct?
6 A. Yes.
7 Q. And there is a check mark in the box, "I agree to allow an
8 inspection"; is that correct?

9 A. Where is that?
10 "I" -- yes.
11 Q. And can you tell us the date where it's indicated that your
12 inspection has been completed and you are in compliance?
13 A. I -- I can't read that.
14 Q. 11/5/01?
15 A. Okay.
16 Q. So looking at this report, does it appear that the Oakland
17 Fire Department performed this inspection?
18 A. Yes.
19 Q. The fire prevention bureau?
20 A. Yes.
21 Q. And it appears that, in fact, it was found to be in
22 compliance at a time subsequent to the initial inspection?
23 A. I'm not -- I'm -- I don't know. I've never read a fire
24 inspection report and I don't --
25 Q. Do you remember where you seized this document from?

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Tuey - Cross / Greenberger

1 A. Someplace in the -- I think it was room 3.
2 Q. Do you know why a commercial inspection would be conducted?
3 A. I have no idea.
4 Q. Did you ever receive any reports by the Oakland Fire
5 Department in connection with the case?
6 A. Again, I wasn't the primary case agent, so no.
7 Q. But you did seize this document?
8 A. I did seize that document.
9 Q. And you recall seizing it in room 3?
10 A. I believe so, yes.
11 Q. And this is -- it indicates on there, 1419 Mandela Parkway?

12 A. Yes, that is what is written.

13 Q. And I -- I didn't show you one other thing, but -- let me
14 see if I can zoom.

15 Does there appear to be a check mark next to
16 "smoking and open flames."

17 Do you see that?

18 A. Yeah.

19 Q. I'm sorry, yes.

20 Showing you another Exhibit 9, these are still
21 photos from the video, Exhibit 9, board 1 of 8?

22 A. You are saying they are still photos from where?

23 Q. From the video, are these taken from the video?

24 A. No, I don't think so.

25 Q. Do you recognize what's depicted in these photos?

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Tuey - Cross / Greenberger

1 A. I believe it's 1419 Mandela.

2 Q. So looking at -- is Exhibit -- or document C, the photo of
3 C, is that 1419 Mandela?

4 A. I believe so, yeah.

5 MR. BEVAN: Just so the record is clear, Your Honor,
6 these photos came -- on that board came from another witness.

7 BY MS. GREENBERGER:

8 Q. Isn't it true that this location is in the warehouse
9 district?

10 MR. BEVAN: I'm sorry, I couldn't hear that.

11 MS. GREENBERGER: Is in the warehouse district,
12 looking at the photo.

13 THE WITNESS: I don't know what district of Oakland
14 they would call that.

15 BY MS. GREENBERGER:

16 Q. Did there appear to be warehouses besides 1419 and the
17 adjacent location?

18 A. I don't recall exactly what was around.

19 Q. Well, you don't recall homes being there, do you?

20 A. I don't remember.

21 Q. Isn't it true that the windows which are on the side of the
22 building looking at the same exhibit C, were not boarded over
23 but had curtains on them?

24 A. Over the window -- I don't recall.

25 Q. Let me just point out --

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Tuey - Cross / Greenberger

1 A. Okay.

2 Q. -- the windows would be going down the side.

3 A. I don't recall.

4 Q. You never seized any buds from 1419?

5 MR. BEVAN: That's been asked and answered, Your
6 Honor.

7 THE COURT: Yeah.

8 MS. GREENBERGER: I'm talking about dry product not
9 on the plants.

10 THE COURT: Well, sustained.

11 BY MS. GREENBERGER:

12 Q. You never seized any U.S. currency from 1419 Mandela?

13 A. No.

14 Q. In the video when you were in room 6 you stated three
15 lights, high-pressure, sodium, a thousand watts. Now that
16 we've looked at the lamp hood marked from room 6 which depicts
17 a 600-watt bulb, would you say that your statement on the video
18 is inaccurate?

19 THE COURT: That's been asked and answered about
20 five times, so please, ask a different question on a different
21 subject.

22 BY MS. GREENBERGER:

23 Q. Can you tell us the size of the mother plants depicted in
24 Exhibit 9, 5 of 8, the dimensions of the plants themselves?

25 A. What room did you want me to reference?

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Tuey - Cross / Greenberger

1 Q. Well, looking at B, what room is that?

2 A. I believe that is room 9.

3 Q. And what size are the plants?

4 A. According to my report, they ranged in height from 1 foot
5 to 2 feet.

6 Q. One to 2 feet?

7 A. Yes.

8 Q. Showing you Exhibit 20.

9 MR. BEVAN: You might want to remove the other
10 exhibit off the glass.

11 MS. GREENBERGER: Thank you.

12 BY MS. GREENBERGER:

13 Q. This is a piece of paper that you seized?

14 A. Yes.

15 Q. Ed Rosenthal's name was not on this list, was it?

16 A. You know, if I looked at it again --

17 Q. Yeah. Okay.

18 (Handing document.)

19 THE WITNESS: Thank you.

20 There is a reference to a roll of joints for Ed.

21 BY MS. GREENBERGER:

22 Q. You don't know who wrote this list, do you?

23 A. I don't.

24 Q. This is your testimony with regard to duties, tasks, items,
25 is your interpretation, correct?

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Tuey - Cross / Greenberger

1 A. Well, there is an instruction on here for someone to fix
2 something, so I assume that is the task.

3 Q. There is no deadlines on that list?

4 A. No.

5 Q. Time lines?

6 A. No.

7 Q. You don't know whether the people's names on that list
8 referred to are volunteers?

9 THE COURT: Sorry. Refer to individuals? Refer to
10 people who have particular tasks? I don't understand the
11 question.

12 MS. GREENBERGER: Volunteers versus employees.

13 THE COURT: Okay.

14 I think he says he doesn't know anything about those
15 people.

16 BY MS. GREENBERGER:

17 Q. Can you answer that question?

18 THE COURT: I don't know how he can answer that
19 question if he does not know anything about the people.

20 Do you have any information as to what the
21 employment relationship or the working relationship was of any
22 of those people to this operation?

23 THE WITNESS: No, all I know is it makes reference
24 to Doug, Brian and Evan and somebody named Ed from the rolling
25 joints.

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1 THE COURT: Okay.

2 BY MS. GREENBERGER:

3 Q. And you don't know who these people are in terms of their
4 relationship with 1419 Mandela?

5 A. It's a list with instructions to do stuff. There were four
6 people's names on the lists. And I found it there.

7 Q. Did these people become targets in the investigation?

8 A. I don't know.

9 Q. Other than seizing that document, did you have any contact
10 with any of those individuals --

11 A. No.

12 Q. -- subsequent?

13 Do you recall seeing any photos of Ed Rosenthal in a
14 city --

15 THE COURT: Did you see any photographs at that
16 location?

17 THE WITNESS: I saw photographs, yes.

18 BY MS. GREENBERGER:

19 Q. Did you see any photographs of Ed Rosenthal with a City
20 Councilman named Nate Miley?

21 MR. BEVAN: Your Honor, that is also objectionable
22 for the reasons I have a previously objected to the question
23 this morning.

24 THE COURT: Yeah. Sustained.

25 The jury is instructed to disregard that.

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1 Note the question.

2 BY MS. GREENBERGER:

3 Q. Do you recall seizing an item entitled "medical list"?

4 MR. BEVAN: Objection. Irrelevant.

5 THE COURT: I'll allow it.

6 THE WITNESS: It is a reference to one of the
7 exhibits that I had seen earlier.

8 BY MS. GREENBERGER

9 Q. It has been marked but not identified.

10 Do you want to check your report?

11 THE COURT: Why don't you show it to him?

12 I'd like to see it first.

13 Okay. Thank you, give it back.

14 BY MR. POULOS:

15 Q. Does that refresh your recollection with regard to --

16 MR. BEVAN: I object to putting a document on the
17 easel before the witness has identified it.

18 THE COURT: Yeah.

19 MS. GREENBERGER: May I approach?

20 BY MS. GREENBERGER:

21 Q. Does this refresh your recollection of a document that you
22 seized at 1419?

23 A. Yes.

24 Q. And what is it entitled?

25 A. Medical list.

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Tuey - Cross / Greenberger

1 THE COURT: Are you offering it?

2 MS. GREENBERGER: I would like to offer.

3 THE COURT: Ladies and gentlemen, the document is
4 being offered into evidence for a limited purpose. The limited
5 purpose is that it shows on it a series of places that -- that
6 may or may not, depending on your findings, have some

7 connection with Mandela Parkway. And so there may be relevance
8 to the fact that in Mandela Parkway was a list of places that
9 may have some relevance for some other aspects of the case.

10 And so it's limited for that purpose only.

11 You are specifically instructed that the fact it
12 says medical list on it is not anything that you should
13 consider in arriving at a decision in this case.

14 Okay. Go ahead, Ms. Greenberger.

15 MS. GREENBERGER: Thank you, Your Honor.

16 THE COURT: Does that have an exhibit number?

17 MS. GREENBERGER: This is Exhibit 25M.

18 THE COURT: 25M.

19 MS. GREENBERGER: M as in Mary, and it's a
20 Government Exhibit.

21 THE COURT: Are you offering it?

22 MS. GREENBERGER: I am.

23 THE COURT: It will be admitted. 25M.

24 MR. BEVAN: No objection.

25 ///

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Tuey - Cross / Greenberger

1 (Defendant's Exhibit 25M was received in
2 evidence.)

3 BY MS. GREENBERGER:

4 Q. Can you tell us where you seized this item of evidence
5 from?

6 A. Can I check my report?

7 Q. Of course.

8 A. Thank you. Room 3.

9 Q. Do you remember where in room 3? Was it posted on the

10 wall? Any indication?

11 A. Yeah. I don't recall exact.

12 Q. There are a number of different items on this list, do you
13 see an entry for the Harm Reduction Center?

14 A. Yeah, yes, I do.

15 Q. And also an entry for McCalif?

16 A. I'm sorry. You're referring to what?

17 Q. McCalif.

18 A. McCalif, yes.

19 Q. Is McCalif related to the receipts you looked at earlier,
20 McCalif Growers?

21 A. Yes.

22 Q. Okay.

23 And then there is a number of other organizations,
24 patients groups, cannabis clinics; did you do anything with
25 this list besides seizing it?

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Tuey - Cross / Greenberger

1 A. I seized it and processed it as evidence.

2 Q. Did any of the individuals on this list become targets of
3 the investigation?

4 THE COURT: Irrelevant.

5 MR. BEVAN: Irrelevant.

6 BY MS. GREENBERGER:

7 Q. On the same date that this search warrant was executed, do
8 you know if there was a search warrant executed at anywhere
9 else on this list? And I can approach --

10 MR. BEVAN: Irrelevant.

11 THE COURT: Sustained.

12 BY MS. GREENBERGER:

13 Q. With regard to the handwritten notes that you seized, there

14 were certain names on the notes that you just described, a few
15 questions before?

16 MR. BEVAN: Which -- I'm sorry, which notes are you
17 referring to?

18 MS. GREENBERGER: May I approach?

19 THE COURT: Yes.

20 MS. GREENBERGER: That would be Exhibit 20.

21 MR. BEVAN: Thank you.

22 BY MS. GREENBERGER:

23 Q. Is there the name Doug on that list?

24 A. Can I see it closer?

25 Q. Sure -- well, the list in front of you.

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Tuey - Cross / Greenberger

1 A. Yeah, Doug is on here, yes.

2 Q. And is there a Brian?

3 A. You are talking about --

4 Q. On your list?

5 A. Yes, there is Brian.

6 Q. And is there Evan?

7 A. Yes.

8 Q. Do you also see those names on Exhibit 25M?

9 A. There is an Evan. There is a -- there is a Doug, and there
10 is a Brian.

11 Q. Thank you.

12 A. Um-hum.

13 Q. Showing you what's been marked as 25H.

14 MR. BEVAN: It's in evidence.

15 BY MS. GREENBERGER:

16 Q. This is a Hertz Equipment Rental receipt?

17 A. Yes.
18 Q. With the name Doug Church on it?
19 A. Can I see it closer?
20 Q. Sure.
21 A. I'm sorry.
22 Q. It's small print.
23 A. I'm getting old.
24 Yes, Doug Church.
25 Q. Do you know who Doug Church is?

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Tuey - Cross / Greenberger

1 A. No.
2 Q. Did he become a subject --
3 MR. BEVAN: Irrelevant.
4 THE COURT: Sustained.
5 BY MS. GREENBERGER:
6 Q. With regard to this fan, which is Exhibit 18, was this the
7 only fan you seized?
8 A. Yes, I believe so.
9 Q. And is the reason why it's the only fan you seized because
10 it was the only portable fan?
11 A. Yes.
12 Q. Showing you Exhibit 9, 1 of 8, does it appear from what you
13 can see that any of the other buildings have windows on them?
14 A. I can only see this one building in these photos.
15 Q. So you don't see any --
16 THE COURT: Sorry, what other buildings are you
17 talking about?
18 BY MS. GREENBERGER:
19 Q. Let me ask you this: Is this the same building as this?
20 A. Yes, I believe so.

21 Q. And so in the Exhibit 9, 1 of 8A --

22 THE COURT: You can't see very much of any other
23 building at all, can you?

24 MS. GREENBERGER: Well, you can see --

25 ///

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Tuey - Cross / Greenberger

1 BY MS. GREENBERGER:

2 Q. Is this building a separate building from Mandela Parkway
3 with the Globe sign on it?

4 A. Yeah. I'm sorry --

5 THE COURT: Well --

6 BY MS. GREENBERGER:

7 Q. From looking at that picture, does that refresh your
8 recollection that the Mandela Parkway was approximately 1500
9 square feet?

10 MR. BEVAN: That has been asked and answered more
11 than once.

12 THE COURT: I have to tell you, I mean, the jury can
13 look at it. They can form their own judgment as to the size of
14 the building. I don't know how you would tell that from here.
15 But I think it has been covered.

16 BY MS. GREENBERGER:

17 Q. I want to show you some evidence from Exhibit 12 --
18 actually, I'll bring it to you.

19 Can you look at these exhibits and tell us, well,
20 the top one, what it is?

21 A. They look like dried marijuana plants.

22 Q. And looking at that particular -- the top one, looking at
23 the stems of it, does it evidence it was pruned for cuttings?

24 A. Yeah, I wouldn't offer an opinion.

25 Q. You can't offer an opinion on that because?

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1 A. I would not.

2 Q. Because you don't know?

3 A. I'm not a horticulturalist, so if you are asking me to
4 determine, I mean, it looks like there is a lot of stem on it,
5 so...

6 Q. Specifically, this portion, does that appear to be pruned
7 for cuttings?

8 A. Which portion are you talking about -- that's where I cut
9 it.

10 Q. What about all of these stems?

11 MR. BEVAN: Your Honor, the record is going to be
12 nonexistent on what counsel is doing up there.

13 THE COURT: That's her problem. I mean, I don't
14 know. What about this, what about that. This and that don't
15 form a record.

16 The Court of Appeals or some other reviewing court
17 can't look at it and say what you meant with this and that.

18 Also you can't really argue it.

19 BY MS. GREENBERGER:

20 Q. Showing you what has been marked as Exhibit 12, and this is
21 Exhibit 40K.

22 A. Yes.

23 Q. Are you able to discern whether there has been any pruning
24 and cuttings taken from this?

25 A. I can tell you that these were cut plants and that we cut

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Tuey - Cross / Greenberger

1 them.

2 MS. GREENBERGER: One moment, Your Honor.

3 THE COURT: Anything further?

4 MS. GREENBERGER: One moment, Your Honor.

5 Just a couple more questions.

6 BY MS. GREENBERGER:

7 Q. Showing you this diagram again, does this reflect room 10?

8 Would you like me to bring it up to you?

9 A. Sure. Please, thank you. You were asking what, again?

10 Q. I was asking you room 10.

11 A. I pointed at room 10, I'm sorry.

12 THE COURT: Mark it.

13 BY MS. GREENBERGER:

14 Q. Showing you Exhibit 23, this is a document that you
15 prepared?

16 THE COURT: This is the diagram that you have been
17 referring to, right?

18 MS. GREENBERGER: That's correct, it's a diagram.

19 We would move for admission of this exhibit.

20 MR. BEVAN: No objection.

21 THE COURT: Admitted.

22 (Defendant's Exhibit 23 was received in
23 evidence.)

24 BY MS. GREENBERGER:

25 Q. So you just indicated then, room 10 is right here?

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Tuey - Cross / Greenberger

1 A. Yes.

2 Q. And just to confirm because I didn't make an X on this,
3 there were no plants seized from this room?

4 A. No.

5 Q. And with regard to this Exhibit, 12, are you able to tell
6 us what room these were seized from?

7 A. It's the bulk sample, so it's a representative of all the
8 plants at the location. It's not specific to one room.

9 Q. So we don't know if these are taken from room 6 or 9?

10 A. As I said, the exhibit is of the entirety of all the plants
11 in the grow.

12 Q. Did you take bulk samples then from both room 6 and 9?

13 A. As I said, the bulk sample is representative of all the
14 plants in the grow.

15 THE COURT: In other words, that sample contains
16 plants that were taken from various locations; is that right?

17 THE WITNESS: Yes, sir.

18 THE COURT: Thank you.

19 BY MS. GREENBERGER:

20 Q. And there were only plants in room 6 and 9, so the bulk
21 sample would have to come from those rooms?

22 A. Yes.

23 Q. When you were at 1419 Mandela did you find any books on
24 cultivation?

25 A. Yeah, I don't recall.

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Tuey - Redirect / Bevan

1 Q. So they might have been there, you're not sure?

2 A. I don't remember.

3 Q. You didn't seize any?

4 A. I didn't seize any.

5 Q. Do you recall if there was any books with Mr. Rosenthal's
6 name on them?

7 A. I --

8 THE COURT: I think he just said he didn't recall
9 seeing any books. So I don't know how he can recall.

10 MS. GREENBERGER: I don't believe I have anything
11 further.

12 THE COURT: Thank you.

13 Mr. Bevan.

14 REDIRECT EXAMINATION

15 BY MR. BEVAN:

16 Q. Mr. Tuey, in terms of the bulk sample, did you take any
17 samples from the clones?

18 A. We took all the clones.

19 Q. So the bulk samples essentially is a random sampling from
20 the mature plants in room 6 and 9; is that correct?

21 A. Yes.

22 THE COURT: Anything further?

23 MS. GREENBERGER: I don't believe so.

24 THE COURT: Thank you very much.

25 So we are going to be in recess until 12:15. We'll

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1 go to about 1:30 today. Remember the admonition given to you,
2 don't discuss the case, allow anyone to discuss it with you,
3 form or express any opinion.

4 I'll see you at 12:15.

5 (Jury out at 11:50 a.m.)

6 THE COURT: Okay. Let the record reflect that the
7 jurors have retired.

8 Mr. Bevan.

9 MR. BEVAN: Your Honor, there were two questions by
10 Ms. Greenberger that in my view were direct violations of Your
11 Honor's order. One was at 10:55 when she asked Mr. Tuey

12 whether or not the different strains correlate, words to this
13 effect, to different medical benefit of the marijuana, which
14 was the subject of a specific ruling by Your Honor.

15 There was a second question at 11:30 where
16 Ms. Greenberger asked whether or not there was a picture of
17 Mr. Rosenthal with Nate Miley, comma, Oakland City Councilman.
18 A specific reference to the title of Nate Miley which was a
19 specific topic of a motion by the Government, a motion in
20 limine. And my reaction to this is very simple; there are
21 rules to abide by in this courtroom. And there are court
22 orders to abide by in the process of this trial.

23 My view, those are two direct inexcusable violations
24 and that is exactly what I was concerned about happening in
25 this case.

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1 Why are there court orders if the defense is not
2 going to comply with them? I just don't understand what's
3 going on.

4 THE COURT: Ms. Greenberger.

5 MS. GREENBERGER: On both issues, Your Honor, with
6 regard to the -- the prosecution opened the door. He
7 introduced the stakes. He introduced evidence of the strains
8 and the significance of the stakes. And he didn't object at
9 the time I asked the question.

10 And with regard to Nate Miley, he was introducing
11 photos that were seized there. When I asked him if he had seen
12 photos, he said yes. And whether he saw a photo or not, is
13 not, from my perspective, a violation of a court order. I
14 didn't get into the -- he said no. So there was no

15 exploration.

16 THE COURT: I see. In other words, your -- your
17 view of a court order is that if court order says you can't
18 mention X and you can then ask the witness whether or not X
19 occurred, and if the answer is no, you haven't violated the
20 Court order, that's your view?

21 MS. GREENBERGER: No, not at all.

22 THE COURT: Then I don't understand your answer.

23 MS. GREENBERGER: Your Honor excluded Nate Miley as
24 a witness, so we will not call him.

25 THE COURT: Yeah. But he was also the subject --

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1 that's correct, he is not -- because he has no relevant
2 testimony to give. That is why he was excluded.

3 I'm not sure whether he was withdrawn or excluded in
4 my ruling but I don't think that makes any difference. I said
5 he had no relevant testimony to give. So you mentioned him.

6 I also just note for the record because, of course,
7 the record can't reflect that but when you did talk about the
8 photograph that the defendant and Mr. AmparC!n broke out in a
9 big grin and winked at Mr. Rosenthal, clearly in view of the
10 jury and the Court. So, obviously, there is a concerted effort
11 to -- to bring out certain things that the Court ruled
12 inadmissible.

13 Let me ask this, Ms. Greenberger, if the Court says
14 that something is irrelevant and should not be mentioned, is it
15 your view that you have a duty to follow that instruction?

16 MS. GREENBERGER: Yes.

17 THE COURT: Fine. So I'm instructing you and
18 your -- take your hands out of your pocket, Mr. AmparC!n, in

19 front of the Court.

20 I instruct you and all counsel in this case that if
21 I give an order not to mention something, you are directed not
22 to mention it. And you acknowledge that you have an ethical
23 duty to follow the Court's instructions. And I'm quite serious
24 about that. I have said that you are not to mention the
25 purpose for which the marijuana was being grown.

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1 Now, I don't doubt for a moment that the reality is
2 that it was grown for distribution to medical marijuana clubs.
3 I understand that. And I'm quite sure everybody understands
4 that in the courtroom.

5 But it's not admissible. It's not relevant.

6 MS. GREENBERGER: I understand.

7 THE COURT: And so I'm instructing you not to
8 mention the medical aspects of marijuana directly or
9 indirectly. A question which says, and I'm quoting from your
10 question, "And wouldn't you agree some strains are more
11 beneficial in treating cancer, HIV, chronic pain," that that
12 question, that question, of course, is in direct violation of
13 the Court's order that such information is not relevant. It's
14 not relevant.

15 If you believe that somehow the prosecution has
16 opened the door, you should then take that matter up outside
17 the presence of the jury, all right?

18 But absent taking it up outside the presence of the
19 jury, you are not to ask those questions.

20 Next, as to the photograph of Mr. Rosenthal and
21 Councilman Nate Miley. I don't understand how you could ask

22 that question. I don't see the basis for asking that question.
23 You can certainly ask the basis of whether there is a
24 photograph of Mr. Rosenthal there, because that's probative
25 that he has some connection with the premises. Usually, it

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1 would be the prosecution that would ask that question.

2 But you could ask it, after all, I think a lot of
3 what you have asked already is basically inculpatory. But,
4 nevertheless, I don't know that the prosecution has a -- has a
5 monopoly on introducing inculpatory evidence. Defense, I guess
6 has their choice that they can introduce inculpatory evidence
7 for a variety of reasons, for a variety of reasons. And they
8 may do so.

9 So you can certainly ask a question if it's a fact
10 or if you believe it to be a fact that there is a photograph of
11 Mr. Rosenthal on the premises, that's fine. But when you say
12 is there a photograph with Mr. -- of Mr. Rosenthal with
13 Mr. Miley, while that may be the truth of matter, the fact of
14 the matter is that I've ruled it to be irrelevant, that it has
15 no probative value, that it certainly is prejudicial.

16 So, again, I think I have to instruct you on that.
17 Now, I am instructing you further and on -- all counsel, I do
18 not want any further questions on who are the subjects of the
19 investigation. I want no further questions about whether other
20 search warrants were executed. I want no further questions on
21 whether or not the people -- other facts were investigated,
22 other theories were investigated, dispositions as to any other
23 cases, save and except, for a prior ruling by the Court, that
24 such questions would be proper.

25 Now, do we understand each other?

1 MS. GREENBERGER: And for the witnesses, for
2 example, James Halloran.

3 THE COURT: Well, of course. But that would be as
4 I would indicate, if a witness testifies who has received
5 benefits from the Government, yes, indeed you may inquire into
6 that. I'm not limiting you in that regard. But I do not want
7 to have any further questions along the line that I have
8 indicated without prior approval of the Court. Okay?

9 MS. GREENBERGER: I understand.

10 THE COURT: Okay. All counsel understand?

11 MR. AMPARCON: May I address the accusations the
12 Court hurled at me?

13 THE COURT: Hurlled?

14 MR. AMPARCON: Yes.

15 THE COURT: Well, you can certainly address my
16 observations.

17 MR. AMPARCON: Thank you, Your Honor. When the Court
18 indicates that it observed me smile and wink at Mr. Rosenthal.

19 THE COURT: Yes, you did.

20 MR. AMPARCON: I did so in response to Mr. Bevan's
21 reaction. It had nothing to do with the question asked. And
22 I'm concerned because of the --

23 THE COURT: What do you mean it had nothing to do
24 with the question asked?

25 MR. AMPARCON: It had nothing to do with

1 Ms. Greenberger's question. It had to do with Mr. Bevan's
2 response. And I would also ask, and I would also bring to the

3 Court's attention, my concern that the Court would
4 automatically jump to a conclusion that there is some kind of
5 conspiracy going on among the defense.

6 THE COURT: I don't know that there is a conspiracy.

7 MR. AMPARCON: That is what the Court said.

8 THE COURT: No, I said it appeared to the Court it
9 appeared to be a concerted effort. Your co-counsel asks a
10 question that is improper and coincidental with that, after she
11 asks the question and there is an objection, you smile and
12 wink.

13 Now, it may be that you smiled and winked in light
14 of the objection. But, of course, what -- why was an objection
15 made? The objection was made because the question was
16 improper. That's why. So I don't know whether or not you are
17 condoning your co-counsel's conduct, which of course, is
18 improper, whether you condone it or not makes no difference.

19 What I'm cautioning you about is you should sit
20 there at counsel table and have no reaction. You should not
21 communicate to the jury whether you like the testimony, whether
22 you don't like the testimony, whether you like the objections,
23 whether you don't like the objections, whether you like the
24 Court's comments or you don't. You can verbalize it. You can
25 put it on the record. But you shouldn't communicate your views

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1 or have it apparent what your views are of the proceedings when
2 the jury is sitting there looking at the proceedings. That's
3 improper.

4 Do you understand that?

5 MR. AMPARCON: I do understand that.

6 THE COURT: Fine. Then please follow that request.
7 And I should say that order.

8 Thank you. We are in recess.

9 (Recess taken at 12:00 p.m.)

10 (Proceedings resumed at 12:16 p.m.)

11 MR. AMPARCON: Your Honor, I want to bring up the
12 fact --

13 THE COURT: I'm going to deal with all this at 1:30.
14 I now have a jury sitting there, so I'll turn to it at
15 1:30 after the jury is excused.

16 MR. AMPARCON: Thank you.

17 (Jury in at 12:17 p.m.)

18 THE COURT: Okay. Let the record reflect that all
19 jurors are present.

20 Would you call your next witness, Mr. Bevan.

21 MR. BEVAN: Yes, Your Honor.

22 The United States would call DEA Special Agent Brian
23 Padgett, that's P-a-d-g-e-t-t.

24

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1 JOHN BRIAN PADGETT,
2 called as a witness for the plaintiff, having been duly sworn,
3 was examined and testified as follows:

4 THE CLERK: State your full name, spell your last
5 name for the record.

6 THE WITNESS: John Brian Padgett, P-a-d-g-e-t-t.

7 DIRECT EXAMINATION

8 BY MR. BEVAN:

9 Q. Good afternoon.

10 A. Good afternoon.
11 Q. Are you a special agent?
12 A. I am.
13 Q. And how many years have you been so employed?
14 A. Nine years.
15 Q. And prior -- what is your current post of duty? Where is
16 your current assignment?
17 A. Winchester, Virginia.
18 Q. And prior to being assigned to that office in Virginia,
19 were you assigned here in San Francisco?
20 A. I was.
21 Q. And for what period of time were you assigned to a group in
22 San Francisco, approximately?
23 A. I was in San Francisco probably --
24 THE COURT: Agent, could you get a little closer to
25 the microphone.

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1 THE WITNESS: This towards me?
2 THE COURT: Sure, yeah.
3 THE WITNESS: I came to California in 1994. I was
4 in Oakland at that time for about a year and then I came to San
5 Francisco for the next probably six years.
6 BY MR. BEVAN:
7 Q. Okay.
8 In the year 2001, 2002, were you assigned to San
9 Francisco?
10 A. Yes.
11 Q. And what group were you in?
12 A. Marijuana group.

13 Q. And what training and experience did you have as of 2001,
14 2002, in processing an indoor grow in the context of an
15 execution of a federal search warrant?

16 A. Well, I had a lot of on-the-job training and I went to
17 various schools put on by DEA and other agencies as well.

18 Q. Okay.

19 Had you prior to, let's say, February 12, 2002, had
20 you processed a marijuana grow in terms of collecting evidence,
21 accounting for the evidence, videotaping, for example, things
22 of that nature?

23 A. Yes.

24 Q. And on the morning of February 12, 2002, were you the agent
25 that was given the responsibility to essentially be in charge

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1 of the execution of the federal search warrant at the location
2 of 52 6th Street in San Francisco?

3 A. Yes.

4 Q. And at that location, was that the Harm Reduction Center?

5 A. Yes.

6 Q. And on the morning of February 12th, did you, in fact,
7 execute a federal search warrant at that location?

8 A. I did.

9 Q. And what was the process of making entry that morning?

10 A. Myself and other agents and officers arrived, I believe it
11 was around 6:00, 6:05 in the morning. There was a large
12 roll-down or roll-up door that was locked. We knocked loudly
13 on the door, announced we were police, we were there to execute
14 a search warrant. We got no response. We cut the lock to the
15 door, rolled the door up, encountered two more tinted glass
16 doors, kind of like you would see at a store front. Those were

17 also locked.

18 We again continued to announce we were police there
19 to execute a search warrant. Got no response, forced entry
20 into the doors and made entry into the building.

21 Q. Was there any sort of a walk-through or a survey of the
22 premises to see if anyone was inside?

23 A. Yeah, we made a protective sweep of the interior just to
24 see if there was anyone there or any potential threats to us.

25 Q. And did you find anyone inside?

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1 A. No.

2 Q. Okay.

3 During the course of -- and did you search the
4 location?

5 A. Yes.

6 Q. And during the course of searching the location, did you
7 find any marijuana plants?

8 A. Yes.

9 Q. And where were the plants that you located?

10 A. There were some plants on -- it was a two-story building.
11 There were some plants on the first floor, but the majority
12 were on the second floor or the basement.

13 Q. Okay.

14 And were plants that you did locate, were they
15 counted?

16 A. Yes.

17 Q. And in connection with the execution of this search
18 warrant, were you the agent that prepared a report reflecting
19 what happened during the execution of the search warrant and

20 accounting for things that were seized as evidence including
21 drugs and nondrug items?
22 A. Yes, I was.
23 Q. Showing you, sir, Exhibit 4 for identification, is this
24 your report, 20-page report reflecting your accounting of what
25 happened that morning?

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1 A. Yes.
2 Q. Now, showing you Government's Exhibit 70, board 1 of 1.
3 THE COURT: Sorry, what number is it?
4 MR. BEVAN: Seventy, Your Honor.
5 THE COURT: Seventy.
6 MR. BEVAN: May I ask the witness to step down?
7 THE COURT: Yeah.
8 BY MR. BEVAN:
9 Q. Agent Padgett, the photographs on this board, first of all,
10 the photograph in photograph A is that a picture of the sign
11 outside or above the entrance to that building?
12 A. Yes.
13 Q. So it says Harm Reduction Center, 52 6th Street, with the
14 number 5759790; is that correct?
15 A. Correct.
16 Q. Okay.
17 B and C, can you describe for the Court and the jury
18 what those pictures reflect?
19 A. B and C are pictures of some of the marijuana plants that I
20 encountered or seized from the basement or second floor of the
21 building.
22 Q. Okay.
23 What about photograph C?

24 A. Same thing. Plants that were in the basement of the
25 building.

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1 Q. Okay.

2 You can take your seat, if you would.

3 THE COURT: This is Exhibit 70? But it's one board
4 of several boards.

5 MR. BEVAN: One board, Your Honor.

6 THE COURT: There will only be one board.

7 Exhibit 70?

8 MR. BEVAN: One board, Your Honor.

9 THE COURT: The one that is in front of the jury?

10 MR. BEVAN: Yes, Your Honor.

11 MR. AMPARCON: What number is that?

12 THE COURT: Seventy, 7, 0.

13 Without objection it will be admitted.

14 (Plaintiff's Exhibit 70 was received in
15 evidence.)

16 BY MR. BEVAN:

17 Q. Showing you, Agent Padgett, a collection of photographs,
18 Exhibit 69, could you take a look at these photographs and tell
19 me whether or not those photographs were taken that day of
20 various things that were observed inside that location?

21 A. Yes, they were.

22 MR. BEVAN: I would offer Exhibit 69 in evidence,
23 being this collection of photographs.

24 THE COURT: Admitted.

25 ///

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1 (Plaintiff's Exhibit 69 was received in
2 evidence.)

3 MR. BEVAN: And I would ask permission to publish
4 these to the jury.

5 THE COURT: Yes.

6 MR. AMPARCON: Your Honor, I would ask that if
7 counsel is going to publish them to the jury, that we not take
8 evidence, it will be too distracting.

9 THE COURT: Divide the photographs in two groups.
10 And give them to each of the two jurors on the end. And then
11 we'll hold off on the evidence until everybody has had a chance
12 to look at them. When you finish your photograph, just pass it
13 on.

14 I guess it's going to get a little confusing, right?

15 BY MR. BEVAN:

16 Q. Now --

17 THE COURT: Wait, wait, Mr. Bevan. Counsel wants
18 the jury to have a pause here and take a look at the
19 photographs.

20 (Jury reviewing photographs.)

21 MR. BEVAN: I believe the jury is now finished, Your
22 Honor.

23 THE COURT: Okay.

24 Go ahead.

25 ///

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1 BY MR. BEVAN:

2 Q. Agent Padgett, in regard to the plants that were located
3 and seized that you have described in these photographs, they

4 were actually counted; is that correct?

5 A. Yes.

6 Q. And at the location that day, how many total marijuana
7 plants were seized?

8 A. 714.

9 Q. And the 714 figure is reflected in your report; is that
10 correct?

11 A. Yes.

12 Q. And of that number of plants, do you recall the breakdown
13 of where -- how many were found in what location versus
14 another?

15 A. Roughly, yes.

16 Q. Okay.

17 Do you need to have reference to -- does your report
18 spell that out?

19 A. Yes.

20 Q. Okay.

21 Can you take a look at your report and tell us that.

22 A. Okay. In the upstairs portion there were 158 total plants.

23 Q. Were you -- when you refer to the upstairs portion, what --
24 what area are you referring to?

25 A. It was the third room we encountered which I refer to in my

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1 report as room 3. Is where we -- where I got those.

2 Q. Okay.

3 And the -- on this photo board, Exhibit 70, what --
4 is there -- this area here in photograph D, could you take a
5 look at this.

6 Go ahead.

7 Exhibit D, that is the downstairs?

8 A. Yes.

9 Q. Basement area?

10 A. Yes.

11 Q. Okay.

12 How many plants were found in the downstairs
13 basement area?

14 A. Total or in each section?

15 Q. What did you say?

16 A. Total or in each section?

17 Q. Each section.

18 A. Along the north wall of the downstairs section there were
19 153. On the south wall, there were 200. And in addition,
20 there was another room that contained 68 plants. And also 135
21 plants.

22 MR. AMPARCON: Your Honor, I would object and move to
23 strike. I don't object to the witness' recollection, but I do
24 object to the witness reading from his police report.

25 THE COURT: Okay.

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1 MR. BEVAN: Well --

2 THE COURT: You looked at the police report to
3 refresh your recollection, you can give that testimony. You
4 should not read the police report.

5 THE WITNESS: Okay.

6 THE COURT: Thank you.

7 BY MR. BEVAN:

8 Q. So based on having refreshed your recollection from your
9 report that you wrote, is it accurate to say that there were a
10 total of 714 plants and there was plants in what you have

11 described as five different areas. One had 153 plants, one had
12 200 plants, one had 158 plants, one had 68 plants and the other
13 had 135 plants?

14 MR. AMPARCON: Objection, misstates the testimony.

15 THE COURT: Clear it up under cross.

16 BY MR. BEVAN:

17 Q. Now, in addition to seizing these plants, was various --
18 were various items of equipment seized?

19 A. Yes.

20 Q. Can you describe what equipment was seized?

21 A. We seized grow lights, grow bulbs, electrical ballasts,
22 there were several computers.

23 Q. Documents?

24 MR. AMPARCON: Objection, leading.

25 THE COURT: Overruled.

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1 THE WITNESS: Documents.

2 BY MR. BEVAN:

3 Q. And how many grow lights were seized in total, do you
4 recall?

5 A. I don't recall the exact number.

6 Q. Can you check your report to see if it reflects the total
7 number of grow lights?

8 A. Okay.

9 Q. Does that refresh your recollection as to how many grow
10 lights were seized?

11 A. Yes.

12 Q. How many?

13 A. Thirty-six.

14 Q. How much?

15 A. Thirty-six.

16 Q. Thirty-six lights.

17 And how many ballasts were seized, do you recall

18 without reference to your report?

19 A. I would need to reference my report.

20 Q. Can you do that, please.

21 How many -- having refreshed your recollection, how

22 many ballasts were seized?

23 A. Thirty-seven.

24 Q. Thirty-seven.

25 And with respect to the grow area in the basement

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1 that is depicted in board D of Exhibit 70, were the lights --

2 was it a functioning grow when you got there?

3 A. Yes.

4 Q. Were there lights on?

5 A. Yes.

6 Q. And were ballasts running?

7 A. Yes.

8 Q. Do you recall how many lights were actually on, grow

9 lights, were on at the time you encountered that area?

10 A. It varied by room, but the main room, each grow bed in

11 the -- what I'm calling the main room where the largest

12 majority of the plants were, there were two lights per bed that

13 were active, so that would be 16 for there. And then the other

14 rooms just had a various number just depending on which room

15 you were in.

16 Q. Okay.

17 Were there lights -- were there operational lights

18 on in every room where plants were found -- were growing?

19 A. There were lights in every room, I don't recall if they
20 were all actually on.

21 Q. Okay.

22 And in photograph D, if you could stand up again,
23 Agent Padgett, point to what you are describing as lights.

24 Where are the lights in photo D?

25 A. It's (pointing.)

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1 Q. So you see three lights there?

2 A. There is actually more. They are just a little hard to
3 see. Yes, those white, they are lights.

4 Q. And were those lights on when you went down there?

5 A. I believe they were. It's been a while, but I think they
6 were.

7 Q. Okay.

8 MR. AMPARCON: Your Honor, I'm going to move to
9 strike. Speculation.

10 THE COURT: Well, he says I believe they were.

11 MR. BEVAN: He said I think they were.

12 BY MR. BEVAN:

13 Q. Was that your answer, Agent Padgett?

14 THE COURT: That's not speculating.

15 BY MR. BEVAN:

16 Q. Now, in terms of collecting and accounting for the
17 marijuana that was found there, did you gather what's referred
18 to as a bulk sample of marijuana?

19 A. Yes.

20 Q. And what do you -- what's that nomenclature mean within
21 your training and experience, a bulk sample?

22 A. It's just kind a representation of the grow that we
23 maintain.

24 Q. Okay.

25 A. Mostly for court purposes.

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1 Q. Showing Government's Exhibit 72B, an evidence box of DEA,
2 is there an evidence tag that bears your signature or your
3 name?

4 A. Yes.

5 Q. And the seal that is on that box, do you recognize the name
6 of the person whose name is on the seal?

7 A. Which seal are you referring to?

8 MR. AMPARCON: I'm sorry. I can't hear the witness.

9 MR. BEVAN: He said what seal are you referring to.

10 BY MR. BEVAN:

11 Q. This seal, the top seal, that I'm pointing to.

12 A. I don't believe I know that person.

13 Q. Okay.

14 Did you physically gather the bulk sample and put it
15 into an evidence box?

16 A. Yes.

17 Q. Okay.

18 Would you kindly take these scissors and break into
19 Exhibit 72B so we can see what's in there.

20 MR. AMPARCON: I'm going to impose an objection as to
21 this witness as to this item based upon his lack of familiarity
22 with the evidence sticker on the outside. He doesn't know that
23 person.

24 THE COURT: Well, I don't -- I'm trying to figure

25 out, and maybe I wasn't paying close enough attention, but did

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1 you box something up?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. And when you boxed it up, did you
4 box it into a box that appears to be the box in front of you?

5 THE WITNESS: Yes, sir.

6 THE COURT: How were you able to identify it?

7 THE WITNESS: Well, there is two labels. The larger
8 label is what I actually put on it when I put it in here.

9 THE COURT: And do you recognize that?

10 THE WITNESS: I do.

11 THE COURT: Is that the label that you executed?

12 THE WITNESS: Yes. But there is -- we put two
13 labels on here. One is just for identification purposes,
14 basically, and one is to show where the box has been sealed and
15 hasn't been tampered with.

16 This particular seal that you can barely see is the
17 one that I would have put on it. The other one is a newer one
18 and I had nothing to do with this label.

19 Does that makes sense to you?

20 THE COURT: Yeah. So you're saying that you are
21 able to identify that box, the box in which you put something
22 into?

23 THE WITNESS: That's correct.

24 THE COURT: Okay.

25 MR. AMPARCIN: Withdraw my objection.

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1 THE COURT: Okay. So that is 72 what?

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MR. BEVAN: B.

THE COURT: 72B admitted.

(Plaintiff's Exhibit 72B was received in evidence.)

MR. AMPARCON: I'm removing my objection to having him open it. I don't know what's inside so I don't know if I have a basis to object to the interior contents.

THE COURT: Okay. Open it up and let's see what you can say about it.

BY MR. BEVAN:

Q. Okay.

If you could take out what's in that box.

A. I don't know if you want me to take it out or --

Q. Yeah, take it out.

THE COURT: Wait, look at it.

MR. BEVAN: Oh, don't take it out.

(Laughter.)

MR. AMPARCON: May I?

THE COURT: Go look at it.

(Defense counsel inspects material.)

BY MR. BEVAN:

Q. So what's in the box?

A. That would be the bulk sample of marijuana that I seized.

MR. BEVAN: I would offer 72B into evidence.

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THE COURT: Admitted without objection.

MR. AMPARCON: I would object as a chain of custody.

THE COURT: Well, okay. Chain of custody is clear.

What's not clear is that somebody at one point opened it and then resealed it; is that correct?

6 MR. BEVAN: Yes, Your Honor, we will have the
7 chemist in here to testify about it.

8 THE COURT: Okay. So it can be admitted subject to
9 a motion to strike, in fact, if it's not connected up.

10 MR. BEVAN: That's fine.

11 THE COURT: Though, I don't know -- it's admitted
12 and I'll hear further discussion about whether it stays
13 admitted.

14 BY MR. BEVAN:

15 Q. So that bulk sample of marijuana, Agent Padgett, came from
16 what marijuana that was seized?

17 A. It was a random sample which encompassed all the plants
18 within that business with the exception of the ones that were
19 clones.

20 Q. And by the way, did you differentiate amongst the 714
21 plants how many of those plants were so-called clone plants?

22 A. Yes.

23 Q. And how many clones were there? If you need to, look at
24 your report.

25 A. Yes.

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1 Q. Go ahead.

2 A. Is there a problem if I give you amounts based on each room
3 or do you want to try to --

4 Q. Having refreshed your recollection from your report --

5 THE COURT: There may be a better way of doing this.
6 Special Agent, this search occurred when?

7 THE WITNESS: February 12th of 2002.

8 THE COURT: Okay. And as you sit here today, do you

9 have a recollection of all of the different amounts that were
10 found in the different rooms independent of the report?

11 THE WITNESS: As far as numbers, yes.

12 THE COURT: You actually remember each number in
13 each room?

14 THE WITNESS: Pretty much, yes.

15 THE COURT: Okay. Well, then, he can say what his
16 recollection is.

17 BY MR. BEVAN:

18 Q. So what -- how many clone plants were -- marijuana clones
19 were found?

20 A. In the upstairs portion there were 158.

21 Q. Okay.

22 What about elsewhere?

23 A. Well, that's what I need to look.

24 Q. So as to other areas --

25 THE COURT: I think that's my point. In other

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1 words, you need to look at the report in order to have a
2 memory.

3 THE WITNESS: If we are distinguishing between
4 clones as well as other plants, yes, I would, Your Honor.

5 THE COURT: Okay. Now, you wrote a report in this
6 case, right?

7 THE WITNESS: Yes.

8 THE COURT: When did you write the report in
9 relation to when the search occurred?

10 THE WITNESS: Within a couple of days.

11 THE COURT: Okay. At the time that you wrote the
12 report, did you have a firm recollection in your mind as to

13 what you saw on that occasion?

14 THE WITNESS: Yes.

15 THE COURT: Okay. Was it fresh in your mind as to
16 what you saw?

17 THE WITNESS: Yes.

18 THE COURT: And when you wrote your report, did you
19 do so accurately?

20 MR. AMPARCON: Your Honor, I'm going to object the
21 leading questions.

22 THE COURT: Well, fine. That's fine.

23 Therefore, pursuant to Evidence Rule 8035. I
24 assume -- 8035, it's a recorded recollection and may be read to
25 the jury. May not be introduced as a document, but may be read

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1 for the jury.

2 MR. BEVAN: And I would at this point move that the
3 witness be permitted to read those portions, Your Honor, that
4 pertain to plant total and the allocation of plants.

5 THE COURT: He may read any portion of that report
6 to which he does not have a recollection. Okay?

7 BY MR. BEVAN:

8 Q. So Agent Padgett, if you would, read the portion of your
9 report that would tell us how many clone plants were found and
10 where they were found.

11 A. All right. In the upstairs portion, which I referred to in
12 my report as room 3, there were 158 clones.

13 Along the north wall of what I have referred to as
14 the main growing area of the basement, there were 44 clone
15 plants.

16 Along the south wall of the main growing room in the
17 basement there were 71 clone plants.

18 THE COURT: You are reading from Exhibit No. 4; is
19 that correct?

20 MR. BEVAN: Um, yes, he is, Your Honor.

21 THE COURT: Thank you.

22 BY MR. BEVAN:

23 Q. So does that account for all the clones, Agent Padgett?

24 A. No.

25 Q. Go ahead.

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Padgett - Direct / Bevan

1 A. And in another room in the basement, which I refer to in my
2 report as the mother room, there were 135 clones, marijuana
3 clones.

4 Q. Now, does that account for all the clones?

5 A. Yes.

6 Q. You just referred to the mother room, it was -- was that a
7 reference to so-called mother plants?

8 A. Yes.

9 Q. Did you see plants that would fit that description?

10 A. Yes.

11 Q. And how big were the plants that you identified as being
12 within that description, approximately?

13 A. Approximately 2 to 4 feet.

14 Q. And how many of those sized plants were there?

15 A. Sixty-eight.

16 Q. Now, did you gather up and retain as evidence all the
17 marijuana clone plants that you seized that day?

18 A. Yes, I did.

19 Q. And did you give them a designation in your report?

20 A. Yes.

21 Q. What designation did you give the clone plants?

22 A. Exhibit 10L.

23 Q. All right.

24 And did you put them in a box and put an evidence
25 label on the box?

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1 A. I did.

2 Q. Showing you, sir, Exhibit 71. Can you tell us whether the
3 evidence label on that box is the label that you gave for the
4 marijuana clone plants?

5 A. Yes, it is.

6 Q. Okay.

7 MR. BEVAN: May the record reflect, Your Honor, that
8 I'm going to open this box which is now sealed.

9 BY MR. BEVAN:

10 Q. Agent Padgett, can you take out everything that's in that
11 box.

12 And those are Home Depot bags?

13 A. Yes.

14 Q. All right.

15 Take a look at each of those Home Depot bags; is
16 there writing on the bag that's yours?

17 A. Yes.

18 Q. Can you take a look at the second one.

19 A. Yes.

20 Q. Okay.

21 And the writing that's on the bag that's yours, is
22 the word that says "clones with roots," is that your

23 handwriting?

24 A. Yes.

25 Q. And this bag says "clones without roots," got a case number 520

Padgett - Direct / Bevan

1 and the date, February 20th, '02 and it says, I believe Harm at
2 the top?

3 A. Yes.

4 Q. Is that your handwriting?

5 A. Yes.

6 Q. And did you put -- did you identify of the clones which, to
7 your observation, had roots and which did not?

8 A. Yes.

9 Q. And on that basis, did you segregate them into those bags?

10 A. I did.

11 Q. And the green leafy substance in front of you, are those
12 the marijuana clones that you put into that box, or in those
13 bags? Can you tell?

14 A. I don't recall putting these into the bag, no.

15 Q. Okay.

16 And that's because why? You can't -- you can't
17 recognize those from other plants or --

18 A. Well, it's not my name on the seal.

19 Q. Okay.

20 Do you recognize the name on the seal?

21 A. No.

22 Q. So would it be fair to say that the plants have been
23 removed from the two bags since the bags are now empty,
24 correct?

25 MR. AMPARCON: Objection, lacks foundation,

1 speculation and leading.

2 THE COURT: Overruled.

3 MR. BEVAN: I'll re- --

4 THE COURT: No, overruled.

5 THE WITNESS: I didn't look in the bags, so I don't
6 know if they --

7 THE COURT: Just look into the bags, okay.

8 MR. AMPARCIN: Your Honor, may I approach?

9 (Counsel approaching.)

10 BY MR. BEVAN:

11 Q. Are the bags empty?

12 A. They are, in fact, empty.

13 Q. Okay.

14 So -- so what we know from that exhibit, according
15 to your testimony, is those two bags contained the marijuana
16 plants, rooted or clones, rooted in one bag and unrooted in the
17 other bag. And at the time you filled the bags up with those
18 plants and -- in those two categories, you put it in the box
19 and then what became of the box?

20 A. The box went to the lab.

21 Q. Okay.

22 MR. BEVAN: All right. I'll reserve until I put the
23 chemist on, Your Honor.

24 THE COURT: Okay.

25 ///

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1 BY MR. BEVAN:

2 Q. Now, did you also take what is known as subsamples for --
3 to assist in the chemical analysis of the plants?

4 A. Yes.

5 Q. And is that standard protocol within DEA?

6 A. Yes.

7 Q. And showing you Exhibit 72A, is there an evidence tag on
8 that exhibit that bears your name?

9 A. Yes.

10 MR. BEVAN: And at this time may the record reflect,
11 Your Honor, that I'm cutting into this exhibit. And I'm
12 removing the contents.

13 BY MR. BEVAN:

14 Q. Now, within that bag, there is a second bag with an
15 evidence tag that has your name on it; is that correct?

16 A. Yes.

17 Q. Within that bag, there is another Ziploc baggie that I am
18 opening that has a series of envelopes; is that correct?

19 A. Yes.

20 Q. And these envelopes, you look at each one and tell us
21 whether or not they have your writing on the envelopes.

22 A. Yes, they do.

23 Q. Okay.

24 Do they have any markings to indicate that those are
25 DEA Exhibit 10A through 10J?

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Padgett - Direct / Bevan

1 A. Not on the -- well, they have --

2 Q. Pardon?

3 A. -- A through J, but there is no case number on it, no.

4 Q. No, Exhibit 10?

5 A. No.

6 Q. They don't?

7 Is the Exhibit 10 on any of those evidence tags?

8 A. Yes.

9 Q. Okay.

10 So do you have any reason not to believe that those
11 envelopes are the subsamples that you created based on the
12 marijuana that you seized at the Harm Reduction Center?

13 MR. AMPARCON: I'm going to object. Vague and
14 compound.

15 THE COURT: Overruled.

16 MR. AMPARCON: Your Honor, may I approach to see the
17 envelopes that they are talking about?

18 THE COURT: Sure.

19 MR. AMPARCON: These came in which baggie?

20 MR. BEVAN: The envelopes came out of the Ziploc
21 bag.

22 MR. AMPARCON: Counsel, do you know which of these
23 envelopes --

24 MR. BEVAN: I pulled those envelopes out of this
25 Ziploc baggie.

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Padgett - Direct / Bevan

1 MR. AMPARCON: Separate and apart from those other?

2 MR. BEVAN: Correct.

3 MR. AMPARCON: Okay.

4 THE COURT: Is there a marking on the Ziploc bag so
5 we know what it is?

6 MR. BEVAN: There is, Your Honor.

7 THE COURT: What does it say?

8 MR. AMPARCON: Um -- I'll let you ask.

9 MR. BEVAN: Go ahead. It says R3-01-0165/10A
10 through J. There is some initials, and it says 3702 and then

11 on the top of that it says -- has the number 7108158 with a
12 date of 10/31/06 with another set of initials.

13 THE COURT: Thank you.

14 BY MR. BEVAN:

15 Q. So let me ask it again, Agent Padgett, I'll ask it
16 affirmatively, do you believe that those envelopes were the
17 subsample envelopes that you put in a sample of marijuana from
18 the Harm Reduction Center?

19 A. Yes.

20 Q. And is the reason you did that for chemical analysis?

21 A. Yes.

22 Q. And did you submit those to the DEA lab or cause them to be
23 submitted for chemical analysis?

24 A. Yes.

25 Q. Okay.

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Padgett - Direct / Bevan

1 MR. BEVAN: Again, Your Honor, I'll reserve until
2 the chemist --

3 THE COURT: Okay.

4 MR. BEVAN: -- identifies them.

5 BY MR. BEVAN:

6 Q. Now, you referenced computers being seized. Agent Padgett,
7 were there also documents seized?

8 A. Yes.

9 Q. And showing you one of them -- showing you, Agent Padgett,
10 Government's Exhibit 78, which is a green folder that is
11 entitled purchase orders, and is there a tag on the outside of
12 that folder?

13 A. Yes.

14 Q. And does that tag indicator have nomenclature on there
15 indicating it was part of the material that was seized at the
16 Harm Reduction Center?

17 A. Yes.

18 Q. And is that referenced -- is that number -- what is the
19 number on that folder?

20 A. My number or your number?

21 Q. Your number.

22 A. N51.

23 Q. And is N51 one of the nondrug items that is referenced in
24 your report?

25 A. Yes.

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Padgett - Direct / Bevan

1 MR. BEVAN: I would offer this exhibit into
2 evidence, Your Honor.

3 THE COURT: Admitted without objection.

4 (Plaintiff's Exhibit N51 was received in
5 evidence.)

6 BY MR. BEVAN:

7 Q. Showing you, Agent Padgett, Exhibit 67, a diskette, can you
8 identify that?

9 A. Yes.

10 Q. And what is Government's Exhibit 67?

11 A. It's a mini DVD.

12 Q. And did you take that video?

13 A. Yes.

14 Q. And were you the one that videotaped the interior of the
15 Harm Reduction Center, 52 6th Street in connection with the
16 execution of a federal search warrant?

17 A. Yes.

18 MR. BEVAN: I would offer that exhibit into
19 evidence.

20 THE COURT: Admitted without objection.

21 (Plaintiff's Exhibit 67 was received in
22 evidence.)

23 BY MR. BEVAN:

24 Q. And the Government's Exhibit 68 is a -- have you watched
25 that VHS tape, Agent Padgett?

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Padgett - Cross / AmparC!n

1 A. Yes.

2 Q. And does that appear to be, having watched it, a true and
3 correct copy of the original videotape?

4 A. Yes.

5 MR. BEVAN: I would offer Exhibit 68 into evidence,
6 Your Honor.

7 THE COURT: Admitted.

8 (Plaintiff's Exhibit 68 was received in
9 evidence.)

10 BY MR. BEVAN:

11 Q. And does the videotape depict and reflect the location or
12 the condition of premises before it was searched?

13 A. Yes.

14 Q. And on the videotape do you narrate the video as you went
15 along?

16 A. Yes.

17 MR. BEVAN: That's all I have, Your Honor.

18 THE COURT: Okay.

19 Cross?

20 CROSS-EXAMINATION

21 BY MR. AMPARCON:

22 Q. Good afternoon, Agent Padgett.

23 A. Good afternoon, sir.

24 Q. You said that you have been a DA -- you said that you've
25 been a DEA agent for nine years?

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Padgett - Cross / Amparcon

1 A. Approximately, yes.

2 Q. And at the time you executed the search warrant on
3 February 12, 2002, you had been an agent for four years?

4 A. Yes.

5 Q. You said that you're currently stationed in Virginia?

6 A. Yes.

7 Q. When did you leave San Francisco?

8 A. I left San Francisco in April of 2005.

9 Q. And prior to testifying today, how many times have you
10 spoken with the federal prosecutor about this investigation of
11 Mr. Rosenthal?

12 A. Since I left?

13 Q. Since 2002 when you executed the warrant.

14 A. I'd say less than five times.

15 Q. And prior to testifying today, when was the last time you
16 spoke with Mr. Bevan?

17 A. Can you repeat that?

18 Q. Sure.

19 Before -- before you took the stand today --

20 A. Right.

21 Q. -- when was the most recent time you had spoken to
22 Mr. Bevan about your testimony?

23 A. This morning.

24 Q. And how many times have you testified against

25 Mr. Rosenthal?

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Padgett - Cross / AmparC!n

1 MR. BEVAN: Objection, irrelevant.

2 THE COURT: Sustained.

3 BY MR. AMPARC!N:

4 Q. And you testified that you were the agent in charge of the
5 execution of the federal search warrant at the Harm Reduction
6 Center, 52 6th Street, San Francisco, California?

7 A. Yes.

8 Q. You were in charge of the execution of that search warrant
9 but you are not the agent that is in charge of the
10 investigation?

11 A. Correct.

12 Q. You did not choose February 12, 2002 as the date to conduct
13 this execution?

14 A. No.

15 Q. And you conducted the -- you -- executed the federal search
16 warrant on February 12th, 2002, at about 6:00 a.m., correct?

17 A. Yes.

18 Q. You said that when you executed the search warrant that
19 early morning you were accompanied by other officers and
20 agents.

21 A. Yes.

22 Q. And is it fair to say that you were accompanied by 16 other
23 officers and agents that morning?

24 A. Sixteen? I don't remember the exact number. That would be
25 reflected in my report.

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Padgett - Cross / AmparC!n

1 Q. Would looking at page 10 of 20 of your report refresh your

2 recollection as to the number of your federal colleagues that
3 were with you that morning?

4 A. Sixteen, that's correct.

5 Q. And those were all federal agents from one agency or
6 another?

7 A. Yes.

8 Q. Now, is it fair to say that you and your 16 colleagues did
9 not meet to discuss this execution of the search warrant the
10 morning of February 12th, but it had been some kind of meeting
11 maybe the day or prior, or do you meet like at 5:00 a.m.?

12 A. There would have been a briefing. Whether it was that
13 morning or the day prior, I don't recall.

14 Q. As you sit here today, it's been five years and you just
15 don't recall when that meeting was?

16 A. I'm positive there was one. I couldn't tell you exactly
17 when it was, though.

18 Q. Would you -- it would be unusual if you are executing a
19 search warrant that involves 16 fellow law officers and you are
20 doing it at 6:00 a.m. in the morning, would it be unusual to
21 have the strategy or planning meeting that very morning
22 considering the early hour?

23 A. Would it be unusual to do that? No.

24 Q. Doesn't matter?

25 A. But it wouldn't be unusual to have it the day before,

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Padgett - Cross / AmparC!n

1 either.

2 Q. Okay.

3 And when you have that organizational and planning
4 meeting, is it fair to say that Special Agent Pickette was in

5 charge of that meeting?

6 A. Yes.

7 Q. And present at that meeting would have been all those
8 special agents similarly situated to yourself, those agents
9 that were in charge of the separate executions of the warrants?

10 A. Yes.

11 Q. Do you recall in total in that planning meeting how many of
12 your federal colleagues were present?

13 A. I do not.

14 Q. If your individual search warrant involved 17, including
15 yourself, is it fair to say that there would have been some 30
16 to 40 agents?

17 THE COURT: Irrelevant.

18 MR. AMPARCON: Looking at the wrong photograph.

19 BY MR. AMPARCON:

20 Q. Special Agent Padgett, I want to ask you, looking at --
21 actually, I'm going to have to ask you to get down a little bit
22 so you can see the same thing the jury is looking at.

23 Prior to executing the search warrant, had you been
24 to the Harm Reduction Center before?

25 A. No.

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Padgett - Cross / AmparC!n

1 Q. So the morning you were there was the first time you had
2 observed the outside of the building?

3 A. The outside of the building?

4 Q. Correct.

5 A. I could have seen it before, I've never been inside of it.

6 Q. Had you noticed the sign that is depicted -- and I'm sorry,
7 what exhibit number is that in the bottom left-hand corner?

8 A. Seventy.

9 Q. In evidence item 70, had you noticed the sign saying Harm
10 Reduction Center before executing the search warrant?

11 A. Prior to February 12th, you mean? I probably had, yes.

12 Q. Okay.

13 And you said that on the morning you knocked on the
14 metal roll-down door to announce your presence when you were
15 trying to execute this federal warrant?

16 A. Yes.

17 Q. Did you attempt to use the phone number that's depicted in
18 9, number A to have somebody let you in before forcing entry?

19 A. No.

20 Q. When you arrived -- if you executed the search warrant at
21 about 6:00 a.m., can you tell the jury about what time you and
22 your fellow agents would have arrived at the site?

23 A. We arrived and immediately set forth executing the warrant.

24 Q. There was no delay from the arrival time to the actual --

25 A. No.

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Padgett - Cross / AmparC!n

1 Q. Okay.

2 A. No.

3 Q. You said that you -- so you cut the lock on the metal
4 roll-down door and you rolled that up?

5 A. Yes.

6 Q. And I'm sorry, I just wanted to ask you a question about
7 the sign. You can go ahead and take a seat again. I'm going
8 to be asking you questions about the other things later on.

9 So you opened up the metal door and you were greeted
10 by a retail establishment?

11 A. I was greeted by two more doors.

12 Q. Two glass doors?

13 A. Yes.

14 Q. Was there any writing on the doors?

15 A. I don't recall if there was or not.

16 Q. Did you photograph the doors?

17 A. I don't know.

18 Q. Do you -- did you videotape the doors?

19 A. I don't -- I don't know.

20 Q. Okay.

21 After -- and so how did you make entry through the
22 glass doors?

23 A. With a hydraulic spreader.

24 Q. And immediately upon entering the Harm Reduction Center,
25 you engaged in an initial protective sweep just to make sure --

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Padgett - Cross / AmparC!n

1 for officer safety?

2 A. Yes.

3 Q. And upon your entry at about 6:00 o'clock in the morning,
4 you found nobody was present?

5 A. Correct.

6 Q. And the place was locked up?

7 A. Correct.

8 Q. Did you diagram the Harm Reduction Center?

9 A. No.

10 Q. And you testified that Harm Reduction Center is a two-story
11 building?

12 A. Yes. There was like a ground level floor and what I would
13 call a basement underneath.

14 Q. So when you are talking about two-story, you are talking
15 about basement and street level?

16 A. Correct.

17 Q. Prior to executing your search warrant, the federal
18 warrant, with your colleagues, did you notify the San Francisco
19 police that you were going to be engaged in this?

20 MR. BEVAN: Irrelevant.

21 THE COURT: Sustained.

22 BY MR. AMPARCO:

23 Q. You said that prior to forcing entry with a tempered glass
24 doors that you again announced your presence and the purpose
25 you were there?

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Padgett - Cross / AmparCO

1 A. Yes.

2 Q. And there was no response?

3 A. Correct.

4 Q. How long did you wait before forcing the glass doors open?

5 A. I don't remember exact, but it took -- it took a couple
6 minutes.

7 Q. And when you entered the Harm Reduction Center -- well,
8 actually, let me ask you this: Upon completing the execution
9 of the search warrant, I believe you testified that you were --
10 sometime after completing the search warrant -- the execution
11 of the search warrant you reduced your findings to a written
12 report, correct?

13 A. Yes.

14 Q. And this is the 20-page typewritten report?

15 A. Yes.

16 Q. And when you wrote the report, you -- you drafted it with
17 attention to detail, correct?

18 A. Yes.

19 Q. You were attempting to make your report a true, complete
20 and accurate reflection of what you found that day?
21 A. Yes.
22 Q. And you do so because these reports are later used in
23 litigation like we are here for today?
24 A. That, and it helped me to remember as well.
25 Q. Okay.

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Padgett - Cross / AmparC!n

1 Is it fair to say that after entering the glass
2 doors, you went through a lobby area in the Harm Reduction
3 Center?
4 A. Yes.
5 Q. That's what your report reflects?
6 A. Yes.
7 Q. There is a seating area for people?
8 A. A seating area was beyond the lobby.
9 Q. And in the lobby you found various desks, tables and
10 chairs, pamphlets and literature?
11 A. Yes.
12 Q. And moving on from this first room you found a room next to
13 it that you entitled room number 2?
14 A. Yes.
15 Q. And in room number 2 you noted that there were numerous
16 tables and chairs arranged in a manner resembling a bar or a
17 restaurant?
18 A. Yes.
19 Q. You observed in this room number 2 various musical
20 instruments?
21 A. Yes.
22 Q. Did you seize any of those instruments?

23 A. No.

24 Q. In this room you found a cash register, did you seize the
25 cash register?

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1 A. No.

2 Q. In this room, number 2, you observed a display case that
3 contained various hemp products and T-shirts?

4 A. Yes.

5 Q. Did you seize the hemp products and T-shirts?

6 A. The -- not the T-shirts, possibly the hemp products. I
7 don't recall.

8 Q. Okay.

9 As to the -- focusing your attention on what you
10 have entitled room number 2, the room past the lobby, is it
11 true that you seized glass smoking paraphernalia?

12 A. Yes.

13 Q. And is it true that you seized indicia?

14 A. Yes.

15 Q. Can you please explain to the jury what indicia is and why
16 it's important?

17 A. Indicia is basically paperwork. If we seize documents on a
18 search warrant, a lot of times we don't have time if it's a
19 large amount of documents to sit and go through each individual
20 piece. So we'll gather them up, process them as evidence, and
21 then once we clear the scene, sometime later we will go through
22 and examine each and every one to see what relevance it has or
23 doesn't have.

24 Q. And typically with indicia, you are looking for information
25 that ties a specific individual to a specific location,

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1 correct?

2 A. That may be one reason. There can be other reasons as
3 well.

4 Q. Okay.

5 In terms of a narcotics -- sorry.

6 In terms -- you said you were assigned to the
7 marijuana unit?

8 A. Yes.

9 Q. In terms of a marijuana unit investigation, what is the
10 purpose of indicia other than tying a certain individual to a
11 certain location?

12 A. Well, it can be what we refer to as pay and owe sheets,
13 showing where drugs are being sold, amount of money coming in,
14 amount of money owed, that type of thing.

15 Q. And in terms of the indicia found in room number 2, did any
16 of the indicia indicate the name of our client, Ed Rosenthal?

17 A. I don't know. I don't remember.

18 Q. Okay.

19 When you were executing the search warrant -- or at
20 the planning meeting prior to the execution of the search
21 warrant, did you discuss with Agent -- Special Agent Pickette
22 the fact that Mr. Rosenthal was a target of the investigation?

23 MR. BEVAN: Irrelevant.

24 THE COURT: I'll allow it.

25 THE WITNESS: I knew he was a target, yes.

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1 BY MR. AMPARC!N:

2 Q. And would it have been part of your duties as the case

3 agent in executing the federal search warrant at the Harm
4 Reduction Center to make note of someone who is a target of the
5 investigation has documents or indicia at the location you are
6 searching?

7 A. Yes, if I had seen it. But like I just got through saying,
8 if there is a large amount of paperwork, we don't go through it
9 all at the scene, we go through it later.

10 Q. Okay.

11 In the -- in the five years, three months and six
12 days since the execution of the search warrant, you -- have you
13 had an opportunity to review the indicia for the name of Ed
14 Rosenthal?

15 A. No.

16 Q. As you sit here today, you have no information that
17 whether -- that as to room number 2 none of the indicia
18 indicates Ed Rosenthal?

19 A. I don't know. I haven't reviewed it all.

20 Q. As you sit here right now, do you have any information,
21 whether it's -- do it in parts.

22 Do you have any evidence that Mr. Rosenthal's name
23 is located on any of the indicia from room number 2?

24 A. If I did, at one point, I don't remember it.

25 Q. If you did at one point, would you have reduced it and

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1 included it into your written report?

2 A. In this particular situation, no.

3 Q. In room number 2 you seized indicia debit card, do you
4 recall that?

5 A. Yes.

6 Q. Was that a debit card belonging to Mr. Rosenthal?

7 A. I don't recall who it belonged to.

8 Q. Had it been -- if Mr. Rosenthal's name had been embossed on
9 that debit card, would you have noted it in your report?

10 A. Probably.

11 Q. And it's not noted in your report?

12 A. Correct.

13 Q. And therefore, by its absence, you can assume that it
14 wasn't Mr. Rosenthal's card, correct?

15 A. Correct.

16 Q. In room number 2 you also seized file folders; was there --

17 A. Yes.

18 Q. -- any information in those file folders that contained the
19 name Ed Rosenthal?

20 A. I didn't review those file folders. My job was to serve a
21 search warrant, period.

22 Q. And you seized what you label a credit author/machine
23 printer which you identify as N31 on page 2 of 20?

24 A. Yes.

25 Q. Do you recall that?

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1 A. Yes.

2 Q. Any indication that what you have entitled as a credit
3 author/machine printer, any indication or evidence or indicia
4 that that belonged to Mr. Rosenthal?

5 A. None.

6 Q. You note as -- in your numerology Exhibit N32 to be
7 photographs; do you recall seizing photographs taken by DEA
8 Special Agent Gary Cummings? Cummings?

9 A. I recall him giving them to me.

10 Q. And did you -- do any of those photographs contain the
11 image of Ed Rosenthal?

12 A. Those were photographs that he actually took with a camera.
13 And Ed Rosenthal was in the presence of them.

14 Q. Okay.

15 Were there any photographs -- not photographs taken
16 during your search, but any photographs seized at the Harm
17 Reduction Center as a result of the execution of the federal
18 search warrant?

19 A. You mean, existing photographs that were present?

20 Q. Something like on the wall or on a desk.

21 A. I don't recall any, no.

22 Q. Okay.

23 And as he was a subject of the investigation, is it
24 fair to say that if you found photographs of Mr. Rosenthal at
25 the Harm Reduction Center you would have included it in your

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1 report?

2 A. Yes.

3 Q. And because of its conspicuous absence, it's fair to say
4 that it didn't exist, correct?

5 A. Correct.

6 Q. I'm going to ask you to move on from room 2, to what you
7 have entitled room 3.

8 THE COURT: Maybe we should take our recess, then.
9 It's 1:30.

10 Ladies and gentlemen, remember the admonition, don't
11 allow anyone to discuss the case with you, don't discuss it
12 with anyone, don't form or express any opinion.

13 Thank you. I'll see you tomorrow morning at 8:30.

14 Leave your notebooks in the jury room.

15 You may step down.

16 (Jury out at 1:30 p.m.)

17 THE COURT: Okay, let the record reflect the jurors
18 have left.

19 What would you like to address?

20 MR. AMPARCON: The comments that the Court made
21 related to the behavior of counsel, and I just want to make
22 sure that that rule applies to the defense. And if the Court
23 is going to focus its attention as to the conduct of
24 defendant's counsel that it equally shares its concern about
25 the conduct of the Government, who continuously turns his head,

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1 shakes his head, frowns, as he objects.

2 And if that is the kind of comment the Court is
3 concerned about defense counsel engaged in, it should be
4 equally concerned about the conduct of the Government,
5 especially as it sits right in front of the jury.

6 THE COURT: When you say "concerned," to the extent
7 that that means I'm troubled by the conduct of the prosecution,
8 you would be in error. I have observed Mr. Bevan as I've
9 observed you. I have not observed any what I would consider
10 impropriety in discharging his duty in this courtroom.

11 Now, the fact is that when you or your colleague
12 starts to disobey an order of the Court, and he may have a
13 reaction by way of an objection, which objection is --
14 evidences to the Court and to the jury his concern about
15 counsel violating court orders, yes, I suppose that that is --
16 that carries with it some message that he feels that this is

17 inappropriate conduct.

18 It's very hard to be absolutely neutral in
19 expressing the concern that he has in the -- and the Court has,
20 with respect to the questions.

21 Also, he is in the difficult position, as we well
22 know, two things; No. 1, is that from a practical point of view
23 he can't stand every single time improper questions are asked
24 and repeatedly object because it gives the impression to the
25 jury that he is trying to hide something. And therefore, puts

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1 him at a disadvantage. And for that reason, the Government --
2 the Court from time to time must interject its own concerns in
3 that area absent an objection by counsel.

4 Then, also there was a line of questioning and I
5 don't remember which of the two of defense counsel said
6 yesterday about, and it may have been even in opening
7 statement, I just can't recall, it certainly constituted a
8 personal attack on Mr. Bevan. It was, was it this attorney who
9 did this and this attorney who did that. Did this attorney
10 give the witness this deal and did this attorney, all
11 referencing Mr. Bevan. We know that is totally improper. It's
12 unprofessional. It is sanctionable, and uncalled for.

13 You may dislike Mr. Bevan, you may have all of your
14 reasons for disliking Mr. Bevan. The decision to prosecute in
15 this case is not Mr. Bevan's. The decision to prosecute in
16 this case is the United States Attorney for the Northern
17 District of California. That is clear.

18 And therefore, if you are annoyed with the decision
19 to prosecute, that's the United States Attorney's decision.

20 And while you might feel that Mr. Bevan is -- has

21 some antagonism or some motivation with respect to this case,
22 that's irrelevant to the prosecution of the case. I don't
23 think that it would be proper for a prosecutor to question the
24 motives of the defense counsel as to why they take a particular
25 case or not a particular case. And I don't think it's

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1 appropriate for defense counsel to question the motivation of
2 the prosecutor. That has nothing to do with what the jury has
3 to decide.

4 It may have something to do with what I have to
5 decide but it has nothing to do with what the jury has to
6 decide.

7 So, yes, I've observed all that, and I have observed
8 defense counsel's comments about Mr. Bevan. And I think they
9 are inappropriate. And they will desist and you should not
10 make those comments in the presence of the jury. You want to
11 say something outside the jury about Mr. Bevan or the Court or
12 anything, you can go right ahead, put it on the record, but
13 it's not your right to make those statements in front of the
14 jury.

15 MR. AMPARCON: My ordinary -- only concern is the
16 fact that -- the impression that it gives to the jury when the
17 Court is treating the physical manifestations and reaction to
18 the introduction of evidence differently when it comes to
19 whether the defense counsel is making those rules and
20 regulations and whether the Government --

21 THE COURT: And you're quite right, of course,
22 there are differences because -- and I don't think it should
23 escape you because the differences are motivated by the

24 improper questions that your side asks. So that somebody has a
25 reaction to it, and objects to it, and by virtue of the

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1 reaction indicates their displeasure with it, of course, that
2 happens.

3 But you might ask yourself the question, who's
4 responsible for that? And, of course, it's you. It's the
5 defense by asking the improper question that invites the
6 response that is improper.

7 So you may not like this case, you may feel this
8 case is wrong. I understand that. But keep your feelings to
9 yourself. Do not express them in connection with the questions
10 that are asked, and the comments that are made.

11 MR. AMPARCON: My concern is only that the Court
12 treats both sides fairly.

13 THE COURT: But I do. If Mr. Bevan starts asking
14 improper questions, I'll certainly -- I'll certainly -- and
15 either you object or you don't object. I'll certainly take a
16 role in connection with that. Of course, I would. You are
17 absolutely right. I'll treat both sides just the same.

18 But the problem is for somebody to get up and
19 complain about the reaction of the United States Attorney to
20 your improper conduct is, of course, a little ironic, and I
21 hope that doesn't escape you.

22 The irony of getting up and saying, "I don't like
23 the way Mr. Bevan is responding to my improper conduct." That
24 is -- that strikes me as being ironic.

25 MR. AMPARCON: The irony of this case does not escape

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1 me, Your Honor.

2 THE COURT: Good.

3 MR. AMPARCON: But my concern, again, is that the
4 Court admonished us regarding our professionalism and conduct
5 and is irrelevant as to what it is that excites us or what it
6 is that excites Mr. Bevan. What is of concern is the
7 unprofessional conduct.

8 THE COURT: Yeah. Well, I have witnessed his
9 conduct and it's not unprofessional in any regard, at least in
10 front of the jury and in front of the Court.

11 Okay. What's next?

12 MR. BEVAN: I have nothing.

13 MR. AMPARCON: One more point.

14 The Court has said that we cannot inquire as to
15 the -- as to the extent or the expansion of the investigation
16 and I would object to that.

17 THE COURT: Subject to an offer of proof.

18 MR. AMPARCON: Because --

19 THE COURT: No, you can make an offer of proof. You
20 want to make an offer of proof of why you want to go into one
21 area or another area, I'll consider it.

22 MR. AMPARCON: Can I make my offer of proof?

23 THE COURT: Yes.

24 MR. AMPARCON: At his opening or before the opening
25 when Mr. Bevan made his opening and introduced the parties at

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1 his table, he didn't introduce Agent Savedra as Agent Savedra,
2 he introduced Agent Savedra as IRS Agent Savedra. And now we
3 have the issue of the U.S. Attorney sitting next to an IRS
4 agent along with other agents in front of the jury with no tax

5 charge pending. It creates an issue of concern that we wish to
6 explore and explain to the jury.

7 THE COURT: That's -- of all the non sequiturs I've
8 heard, that strikes me as being one of the more profound. In
9 other words, because an agent, an IRS agent, is sitting at the
10 table and you feel that that then warrants questioning as to
11 the scope of the investigation, I --

12 MR. AMPARCON: At least expanding it to IRS agents.

13 THE COURT: And that's your offer of proof?

14 MR. AMPARCON: Yes.

15 THE COURT: Denied.

16 MR. AMPARCON: One more thing. The Court has
17 precluded us from speaking about or asking or inquiring into
18 issues of medical nature. Both in his opening and in his
19 direct examination of Agent Pickette, the Government repeatedly
20 referred to in, quote, "so-called clubs," unquote. We wish to
21 inquire either through -- inquire through witnesses to explain
22 to the jury Mr. Bevan's or the Government's term of so-called
23 clubs.

24 THE COURT: Okay. And that will be denied.

25 The -- whether they are clubs, so-called clubs,

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1 medical dispensaries, hospitals, hospice centers, narcotics
2 dens, none of that will be considered by the jury. Other than
3 they have to consider the fact that marijuana was distributed
4 to some places, and what those places are called.

5 MR. AMPARCON: Well, they are --

6 THE COURT: However, how it's delineated. That's
7 why I let in as an example the list that was filed or found

8 at -- on Mandela Parkway because it indicates, it says,
9 medical, so forth, but it also lists, and I don't have it in
10 front of me, the Harm Reduction Center. I'm sure it has
11 references to club or it has reference to dispensary or
12 reference to locations. That's fine for the limited purpose of
13 showing that there was a distribution. That's the purpose.

14 What the ultimate purpose is, that is how it was
15 used, the purpose of the marijuana and so forth, that's
16 inadmissible. And I don't know how many times I have to say
17 that. That is inadmissible. Therefore, you shouldn't ask what
18 was this club used for, if you have any reason to believe that
19 it was used for medicinal purposes.

20 MR. AMPARCON: Then I would ask for a court order
21 precluding Mr. Bevan from referring to the dispensaries as
22 quote, "so-called clubs."

23 THE COURT: Do not use the word "so-called," all
24 right? Say "clubs."

25 MR. BEVAN: That's fine.

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1 THE COURT: Anything further?

2 MR. AMPARCON: That's it.

3 THE COURT: All right.

4 MR. BEVAN: Thank you, Your Honor.

5 (Proceedings adjourned at 1:42 p.m.)

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CERTIFICATE OF REPORTER

I, Sahar McVickar, Official Court Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing. The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

Sahar McVickar, RPR, CSR No. 12963

May 16, 2007