

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  
Tuesday, May 22, 2007

Reporter's Transcript of Proceedings

Appearances:

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Robert Ampar&aacute;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

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4	74D		1074
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9 Defendant's Exhibits: W/Drawn Iden. Evid.  
10 None

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1 Tuesday, May 22, 2007

8:35 a.m.

2 P R O C E E D I N G S

3 THE COURT: Are we ready?

4 MR. AMPAR&Aacute;N: We are -- Mr. Rosenthal is coming  
by

5 BART.

6 THE COURT: We have to wait. Okay, we have to wait.

7 So what -- let the record show the defendant is not  
8 present; however, I want to talk about scheduling matters. The

9 attorneys are present.

10 What is the scheduling?

11 MR. BEVAN: Your Honor, we are going to have four  
12 witnesses this morning.

13 THE COURT: Who?

14 MR. BEVAN: In this order: Harvey Rudman, the  
15 realtor; Chris Fay, the undercover agent for the Harm purchase;  
16 Richard Watts, assuming he shows up; and Bob Martin.

17 THE COURT: Okay.

18 MR. BEVAN: We have some telephone records to put  
19 in. I did want to -- we talked about those money orders to  
20 Black Point School, and the agents actually scheduled those and  
21 counted them up; I said 10- to 15,000, it's actually 8,905, and  
22 there are 17 money orders. So I wanted to clarify that and  
23 correct the amount.

24 I also wanted to talk about Rick Watts' criminal  
25 history based on what his actual record is in reference to the

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1 opening statement.

2 (Defendant enters courtroom.)

3 THE COURT: Okay. Let the record reflect the  
4 defendant is present.

5 Yeah, go ahead.

6 MR. BEVAN: Your Honor, we haven't fully addressed  
7 the defense counsel's statements which I thought were  
8 inappropriate in opening statement. But one of them had to do  
9 with the criminal record of Mr. Watts. And, in particular, she  
10 referenced, in effect, that he was a wife beater, spousal  
11 abuse, I remember being mentioned, which is not the kind of  
12 conviction you would mention in opening statement without

13 clearing that matter with the judge.

14                   403, the admissibility under 609, all of those  
15 matters should have been discussed with Your Honor before you  
16 float something like that in front of the jury and just  
17 completely emasculate someone's reputation. It was in the  
18 newspaper, even.

19                   But for purposes of this morning's cross-examination  
20 of Richard Watts, I would move to exclude any reference or  
21 cross-examination about a 1987 misdemeanor conviction under  
22 273.5, infliction of corporal injury on a spouse/cohabitant; an  
23 arrest -- an arrest under that same section in 1986.

24                   He also has a misdemeanor possession of dangerous  
25 drugs without prescription in 1999. And he has a felony

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1 conviction under 11350 in 2003.

2                   So that would be my motion --

3                   THE COURT: Well, what about the felony conviction,  
4 why couldn't he be impeached with a felony conviction?

5                   MR. BEVAN: I'm not referencing the felony  
6 conviction. I do believe that would be usable in  
7 cross-examination, but the misdemeanor.

8                   THE COURT: Right, okay, I understand.

9                   Do you have any issue as to that, in other words,  
10 the motion to exclude any reference at all to any conviction  
11 other than the felony conviction on the drug offense?

12                   MR. AMPAR&Aacute;N: That's fine, Your Honor. We'll  
limit

13 our cross-examination -- our impeachment on Mr. Watts as to his  
14 criminal history as to the crack possession.

15                   THE COURT: What was the charge in the drug --

16 MR. AMPAR&Aacute;N: Crack possession.

17 MR. BEVAN: 11350 of the Health and Safety Code.

18 Possession of a narcotic controlled substance.

19 MR. AMPAR&Aacute;N: It's crack possession.

20 THE COURT: Yeah, I don't know that you get to

21 identify the drug, that's what I'm thinking about.

22 Seems to me you get to identify -- you have to say,

23 have you ever been convicted of a felony. If he says yes --

24 the prosecution can do it. If he says yes, isn't that the end

25 of it?

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1 MR. BEVAN: I believe that the judgment references

2 the drug, Your Honor. They are entitled to cross-examine on

3 the drug but not the circumstances underlying the --

4 THE COURT: What is the code section?

5 MR. BEVAN: 609.

6 THE COURT: 609.

7 MR. AMPAR&Aacute;N: Your Honor, it also goes to

8 impeachment and bias in that it serves to implicate sentencing

9 considerations in pending matters and future matters.

10 THE COURT: Well, you can certainly -- you can

11 certainly examine him on what penalty he faced and to the

12 extent he has a prior felony conviction for narcotics, if that,

13 in fact, would enhance the sentence, it probably would, if he's

14 charged again for drugs, having once been convicted. Isn't

15 that -- you are the expert, Mr. Bevan, but isn't that a --

16 MR. BEVAN: Yes.

17 THE COURT: That is?

18 MR. AMPAR&Aacute;N: It would have impact both in State  
and

19 Federal Court.

20 THE COURT: I don't care about State Court.

21 The question is, though, whether -- to what extent  
22 can you go into the penalty. I mean, can you go into the  
23 penalty.

24 MR. BEVAN: I believe, Your Honor, any state or  
25 federal narcotics convictions under 841(b) is sufficient to

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1 enhance the penalty. It doesn't have to be possession for  
2 sale.

3 THE COURT: I see.

4 MR. AMPAR&Aacute;N: And, Your Honor, I don't plan to go  
5 further than identifying for the jury -- I think 11350 is  
6 innocuous.

7 THE COURT: No, no. I'm just curious as to what  
8 extent, and I face it all the time with defendants testifying  
9 or witnesses, to what extent you can discuss the nature of the  
10 offense, identify the nature of the offense.

11 MR. AMPAR&Aacute;N: My concern, and I think the problem  
12 in

13 this case, Your Honor, is that in his questioning, Mr. Bevan is  
14 constantly referring to the marijuana in this case as  
15 narcotics, in his questioning of Government witnesses. And --

16 THE COURT: I think he said controlled substances.

17 MR. AMPAR&Aacute;N: He has also used the word  
18 narcotics.

19 THE COURT: Okay.

20 MR. AMPAR&Aacute;N: In referencing marijuana which is a  
Schedule I drug. And I believe that it would be important for  
the jury to know that this is not a marijuana conviction.

21 THE COURT: Why?

22 MR. AMPAR&Aacute;N: I think it would go to his  
23 credibility.

24 THE COURT: What difference does it make whether  
25 it's a marijuana conviction or a crack cocaine conviction?

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1 MR. AMPAR&Aacute;N: I think that goes to his  
credibility.

2 It goes to his honesty.

3 THE COURT: No, but legally --

4 MR. AMPAR&Aacute;N: To --

5 THE COURT: -- you can ask him whether he's been  
6 convicted of a felony because it does go to his honesty, even  
7 though -- well, interesting, it says, "convictions for narcotic  
8 offenses are not admitted under 609(a)(2)."

9 MR. BEVAN: There is case law that says that 11350  
10 convictions are usable in cross-examination of a defendant as  
11 going to his credibility. They don't articulate why a drug  
12 conviction relates to credibility but that is the Ninth Circuit  
13 law.

14 THE COURT: Okay.

15 MR. AMPAR&Aacute;N: And, Your Honor, we would also ask  
16 to -- I don't believe that to be a recent printout of  
17 Mr. Watts' criminal history. I believe that doesn't reflect  
18 his recent tax evasion charges.

19 THE COURT: So what?

20 MR. AMPAR&Aacute;N: I would like to impeach him with  
that  
21 conduct.

22 MR. BEVAN: It's not --

23 THE COURT: Under what rule of evidence? I know

24 what you would like to do, the question is under what rule of  
25 evidence permits you to do it?

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1 MR. AMPAR&Aacute;N: 609.

2 THE COURT: 609.

3 MR. AMPAR&Aacute;N: (a)(2).

4 THE COURT: Okay, 609(a)(2).

5 "Evidence that any witness has been convicted of a  
6 crime shall be admitted if it involves dishonesty or a false  
7 statement regardless of the punishment." If he was -- he was  
8 convicted of a tax offense; is that right?

9 MR. BEVAN: A misdemeanor.

10 THE COURT: Okay. Right. Okay.

11 Go ahead.

12 MR. AMPAR&Aacute;N: Thank you.

13 THE COURT: So where are we in this right now?

14 MR. BEVAN: Harvey Rudman, Your Honor. I'm ready to  
15 proceed.

16 THE COURT: Okay. Let's bring in the jury.

17 (Jury in at 8:42 a.m.)

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

20 Mr. Bevan, your next witness.

21 MR. BEVAN: Yes, Your Honor.

22 Good morning.

23 The United States would call Mr. Harvey Rudman.

24

25

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1 HARVEY RUDMAN,  
2 called as a witness for the plaintiff, having been duly sworn,  
3 was examined and testified as follows:

4 MR. BEVAN: R-u-d-m-a-n.

5 THE CLERK: State your full name, spell your last  
6 name for the record.

7 THE WITNESS: My name is Harvey Rudman, R-u-d-m-a-n.

8 DIRECT EXAMINATION

9 BY MR. BEVAN:

10 Q. Good morning, Mr. Rudman.

11 A. Good morning.

12 Q. And how old are you, sir?

13 A. Fifty-eight.

14 Q. And do you know the defendant, Mr. Ed Rosenthal?

15 A. I do.

16 Q. Have you -- are you personal friends with him?

17 A. I'm an associate. I know him on a social level.

18 Q. Okay.

19 Have you also acted as a realtor in connection  
20 with -- on Mr. Rosenthal's behalf at any time in the past?

21 A. I have.

22 Q. Directing your reference -- or your attention, Mr. Rudman,  
23 straight ahead to the period of 2000, do you have that year in  
24 mind?

25 A. I do.

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Rudman - Direct / Bevan

1 Q. And did Mr. Rosenthal hire you to be his realtor on his  
2 purchase of the -- of a building, commercial building at the  
3 location of 1419 Mandela Parkway?

4 A. He did.

5 Q. Okay.

6 And were you his only realtor on that purchase?

7 A. I represented Mr. Rosenthal.

8 Q. And there was no other realtor that worked on it on behalf

9 of Mr. Rosenthal; is that correct? You were the only one?

10 A. Yes, sir.

11 Q. And do you recall the date that escrow closed on the -- on

12 his purchase of that property?

13 A. Not exactly, sir.

14 THE COURT: Excuse me, I have to take a brief call,

15 so we are going to be in recess for about five minutes. I

16 think it would be a good idea for you to retire to the jury

17 room. This emergency just came up.

18 Remember the admonitions given.

19 (Brief recess taken/jury excused at 8:46

20 a.m.)

21 (Proceedings resumed at 8:51 a.m.)

22 MR. BEVAN: Your Honor, before the Court brings the

23 jury back in.

24 THE COURT: Well, they're here.

25 MR. BEVAN: Oh, that's fine.

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Rudman - Direct / Bevan

1 THE COURT: Let's deal with this later.

2 (Jury in at 8:52 a.m.)

3 THE COURT: Yeah. Thank you, let the record show

4 all parties are present. Jurors are present.

5 Go ahead.

6 DIRECT EXAMINATION, CONTINUED

7 BY MR. BEVAN:

8 Q. Mr. Rudman, I asked you to take a look at Exhibit 33A,  
9 which is the escrow file from Chicago Title on the break. And  
10 there is a buyer's borrow settlement statement, closing date of  
11 July 12, 2000, can you see that?

12 A. Yes, sir.

13 Q. Does that refresh your recollection that the official date  
14 on which Mr. Rosenthal purchased that property was July 12th,  
15 2000?

16 A. Yes, sir.

17 Q. Okay.

18 And what was the purchase price?

19 A. I believe it was \$150,000.

20 Q. And in connection with when people buy property, at least  
21 in California, and it goes through a title company, that's  
22 known as escrow; is that correct?

23 A. Yes, sir.

24 Q. And that's a process where the title company is --  
25 essentially gathers various documents pertaining to the

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Rudman - Direct / Bevan

1 transfer of ownership, gathers documents having to do with  
2 financing, if there is financing; they accept, actually act as  
3 the middle person with respect to deposits and they settle up  
4 in the end on a closing date by disbursing money to the seller  
5 if money is to be disbursed, and accounting for everything that  
6 they have received by way of funding. Would that be sort of a  
7 general summary?

8 A. Yes, sir.

9 Q. Okay.

10 Can you keep your voice up?

11 A. Yes, sir.

12 Q. And in connection with you being Mr. Rosenthal's realtor,  
13 did you receive a commission upon close of escrow?

14 A. Yes, sir.

15 Q. What was the amount of the commission approximately?

16 A. \$3600.

17 Q. Now, prior to close of escrow, did you assist or were you  
18 aware of deposits that were made on Mr. Rosenthal's behalf into  
19 escrow toward the down payment?

20 A. Yes, sir.

21 MR. AMPAR&Aacute;N: I want to object on the relevancy  
22 grounds.

23 THE COURT: I'll permit it.

24 MR. BEVAN: Exhibit 33B in evidence.

25 ///

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Rudman - Direct / Bevan

1 BY MR. BEVAN:

2 Q. Mr. Rudman, this is a collection of -- a subset, really, of  
3 the escrow file. It has to do with the down payments that came  
4 into escrow. Just showing you these receipts, and identifying  
5 them for the record, is it correct that escrow -- the first  
6 deposit in escrow was at or about May 19, 2000, in the amount  
7 of \$5000 on a check written by Mr. Rosenthal for that amount?

8 A. Yes, sir.

9 Q. And then there were other deposits to escrow, one for  
10 \$15,000 on a --

11 MR. AMPAR&Aacute;N: Your Honor, I'm going to object to  
12 Counsel testifying.

13 MR. BEVAN: I'll rephrase it.

14 BY MR. BEVAN:

15 Q. Could you identify the deposits, Mr. Rudman, that came into  
16 escrow?

17 MR. AMPAR&Aacute;N: I'm going to object on relevancy  
18 grounds.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, sir.

21 BY MR. BEVAN:

22 Q. What were the amounts and who was the source of the  
23 deposits?

24 A. The first deposit was July 11th, for \$15,000. And the  
25 source of deposit was Jane Klein.

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Rudman - Direct / Bevan

1 Q. And do you know Jane Klein to be the wife of Ed Rosenthal?

2 A. Yes, sir.

3 Q. And what was the next deposit?

4 A. The next deposit was July 11th, 2000 for \$10,000.

5 Q. And what was the source of that?

6 A. Ed Rosenthal.

7 Q. July 11? What was the next deposit?

8 A. The next deposit was also July 11th for \$4000 by

9 Ed Rosenthal.

10 Q. Is there another deposit?

11 A. There -- on July 10th, there was a deposit of \$10,000 by  
12 Jane Klein.

13 On June 20th, there was a \$5000 deposit by Ed

14 Rosenthal.

15 Q. Any initial deposit that I asked you about?

16 A. I believe that these are just the copies of the actual  
17 checks.

18 Q. Okay.

19 So would it be fair to say that the down payment was  
20 approximately \$44,000, somewhere in that vicinity, on the  
21 purchase price of \$150,000?

22 A. Yes, sir.

23 Q. And the balance was, in essence, a new loan between  
24 Mr. Rosenthal and Mr. Leslie Wilmer?

25 A. Yes, sir.

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Rudman - Direct / Bevan

1 Q. Okay.

2 Such that at the close of escrow Mr. Rosenthal was  
3 obligated to make monthly payments to Mr. Leslie Wilmer; is  
4 that correct?

5 A. Yes, sir.

6 Q. And title to this property was taken in the name of  
7 Mr. Rosenthal as his sole and separate property; isn't that  
8 correct?

9 A. Um.

10 Q. Or words to that effect?

11 A. If it says so, I believe that to be true.

12 Q. Can you look through this file and satisfy yourself with  
13 the deed that he took this property as his separate property?

14 A. Yes, sir.

15 Q. Okay.

16 He took that property as his sole and separate  
17 property, correct?

18 A. Yes, sir.

19 Q. And that is one of the forms of title that a person can  
20 hold title, even though that person is married; is that  
21 correct?

22 A. Yes, sir.

23 Q. And in connection with that, did Jane Klein execute what is  
24 known as a quitclaim deed relinquishing her interest, whatever  
25 that may be, in the property to Mr. Rosenthal in essence to

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Rudman - Direct / Bevan

1 clear her name from or have any interest in that property?

2 A. I believe so.

3 Q. Okay.

4 So at close of escrow, would it be accurate to say  
5 that Mr. Rosenthal was the sole owner of this property?

6 MR. AMPAR&Aacute;N: Objection. Asked and answered.

7 BY MR. BEVAN:

8 Q. Were you aware, Mr. Rudman, at some later date, a deed of  
9 trust was recorded against that property in favor of Ms. Klein  
10 by Ed Rosenthal?

11 A. I'm really not sure of that.

12 Q. Showing you Exhibit 33F in evidence, a deed of trust  
13 recorded in October 7, 2002. Does that refresh your  
14 recollection that at some later date, more than two-and-a-half  
15 years or more than two years after close of escrow, a deed of  
16 trust was recorded against that property?

17 MR. AMPAR&Aacute;N: Your Honor, I'm going to object to  
18 this question being posed to this witness as to something  
19 totally irrelevant to his testimony. He is not the custodian  
20 of these documents. And he doesn't know what happened years  
21 afterward.

22 THE COURT: Sustained.

23 BY MR. BEVAN:

24 Q. Was there a note -- were you aware of a promissory note

25 executed by Mr. Rosenthal in favor of Jane Klein in connection

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Rudman - Direct / Bevan

1 with this purchase?

2 A. I'm not really sure, sir.

3 Q. Okay.

4 MR. AMPAR&Aacute;N: Your Honor, object as to relevance  
of

5 this line of questioning.

6 THE COURT: Well, it may be relevant, subject to a  
7 motion to strike.

8 BY MR. BEVAN:

9 Q. Now, prior to close of escrow, on -- on July 12, did you  
10 set foot inside the building at 1419 Mandela Parkway?

11 A. I don't recall the first time that I set foot in the  
12 building.

13 Q. Would it be your normal and customary practice as a realtor  
14 for a buyer of real estate to -- to inspect or go onto the  
15 property that your client is buying before close of escrow?

16 A. If my client wished it, yes.

17 Q. But how long have you been a realtor, Mr. Rudman?

18 A. Almost 30 years now.

19 Q. Almost 30 years. And wouldn't it be fair to say that is  
20 your normal practice?

21 A. Yes, sir.

22 Q. And in this case you have no recollection of going into the  
23 building before close of escrow; isn't that true?

24 A. Yes, sir.

25 Q. Did you intentionally stay away from the building, going

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Rudman - Direct / Bevan

1 in, before close of escrow?

2 A. I don't recall if I intentionally stayed away.

3 Q. Did you know that there was marijuana being grown in the  
4 building prior to close of escrow?

5 A. I don't remember when that became clear to me.

6 Q. After close of escrow, did you go into the building?

7 A. Yes, sir.

8 Q. And how soon after close of escrow did you go into the  
9 building?

10 A. Within a couple of days.

11 Q. Within a couple of days?

12 A. Yes.

13 Q. And how many times total have you -- I'll rephrase that.

14                   Between close of escrow and February 12th, 2002, how  
15 many times were you inside the building at Mandela Parkway?

16 A. At least a half a dozen.

17 Q. At least half a dozen.

18                   And on each occasion when you were there was

19 Mr. Rosenthal there?

20 A. No, sir.

21 Q. Pardon me?

22 A. No, sir, he wasn't there all the time.

23 Q. Okay.

24                   On the occasions where he wasn't there, what were  
25 you doing there?

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Rudman - Direct / Bevan

1 A. I was trying to sell the building.

2 Q. This is before February 12, 2002?

3 A. Is that the sales date?

4 Q. February 12, 2002 is the date of the DEA search of the

5 building. Assume that.

6 A. Could you rephrase that question?

7 Q. Assume that February 12, 2002 is the date that DEA executed  
8 a search warrant and removed all the plants.

9 A. Okay.

10 Q. Okay.

11 With that date in mind, my question to you,  
12 Mr. Rudman, is between close of escrow on July 12, 2000, and  
13 February 12, 2002, how many occasions when you were in the  
14 building was Mr. Rosenthal there?

15 A. Every time.

16 Q. Every time.

17 And each and every time you were there, did you see  
18 the marijuana grow or were you aware of it inside?

19 A. Yes, sir.

20 Q. Did you see other -- other people inside, worker -- worker  
21 type people?

22 A. On one occasion.

23 Q. On one out of the half dozen times?

24 A. The half dozen times covers all the times that I went  
25 there.

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Rudman - Direct / Bevan

1 Q. Okay.

2 So how many times were you there before February 12,  
3 2002?

4 A. Maybe three or four.

5 MR. AMPAR&Aacute;N: Objection. Relevance.

6 THE COURT: Overruled.

7 BY MR. BEVAN:

8 Q. Three or four?

9 A. Three or four times, yes.  
10 Q. And each time on those three or four occasions did you see  
11 workers there?

12 MR. AMPAR&Aacute;N: Objection, asked and answered.

13 THE COURT: Overruled.

14 Go ahead.

15 THE WITNESS: At least half of the time there were  
16 workers there.

17 BY MR. BEVAN:

18 Q. Did you come to know them or were you introduced to them?

19 A. No, sir.

20 Q. Did you know any of their names?

21 A. No, sir.

22 Q. Did you ever -- were you ever introduced or were you -- did  
23 you ever refer to someone as Brian?

24 A. No, sir.

25 Q. Or Etienne?

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Rudman - Direct / Bevan

1 MR. AMPAR&Aacute;N: Objection, leading.

2 THE COURT: Overruled.

3 BY MR. BEVAN:

4 Q. Etienne?

5 A. No, sir.

6 Q. Doug?

7 A. No, sir.

8 MR. AMPAR&Aacute;N: Objection. Asked and answered.

9 He said he didn't talk to anybody by name and he  
10 didn't know any names. So going through a list of names is --

11 THE COURT: Okay. Overruled.

12 BY MR. BEVAN:

13 Q. Evan?

14 A. No, sir.

15 Q. Did you see people working on the plants, or doing anything  
16 having to do with marijuana?

17 MR. AMPAR&Aacute;N: Objection. Vague.

18 MR. BEVAN: I'll rephrase.

19 BY MR. BEVAN:

20 Q. Either watering plants, cutting plants, trimming plants,  
21 checking on lighting, any of those sorts of activity in  
22 relation to the marijuana plants? Did you see that sort of  
23 activity taking place?

24 A. Yes, sir.

25 Q. And on how many occasions did you see that sort of activity

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Rudman - Direct / Bevan

1 taking place when you were there?

2 A. Once or twice.

3 Q. Once or twice?

4 A. Um-hum.

5 Q. Now, did there come a point where you looked at property  
6 across the street as a potential site property for  
7 Mr. Rosenthal to purchase, or somewhere in that vicinity of  
8 1419 Mandela Parkway?

9 A. I would say we looked at --

10 THE COURT: Sorry?

11 MR. AMPAR&Aacute;N: Objection. On relevance grounds as  
12 to  
12 other possible potential purchases.

13 THE COURT: Okay, overruled.

14 THE WITNESS: Ed did mention to me that a building

15 was for sale across the street and that he thought it would  
16 make a very good real estate investment.

17 BY MR. BEVAN:

18 Q. Okay.

19 Did you check it out for him?

20 A. Not beyond just calling up on the sign.

21 Q. Okay.

22 And that transaction did not materialize?

23 A. No, sir.

24 Q. And was there an occasion where you went to San Francisco  
25 with Mr. Rosenthal to check out another potential property?

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Rudman - Direct / Bevan

1 A. No, sir.

2 MR. AMPAR&Aacute;N: Objection to this line of  
questioning.

3 THE COURT: On the grounds of relevance?

4 MR. AMPAR&Aacute;N: Yes.

5 THE COURT: Overruled.

6 MR. AMPAR&Aacute;N: Relevance also on the ground -- on  
7 matters that we have discussed outside the presence of the  
8 jury.

9 THE COURT: I don't recall any such discussion.

10 Overruled, go ahead.

11 BY MR. BEVAN:

12 Q. Do you recall going to San Francisco and checking out a  
13 parcel of property with Mr. Rosenthal?

14 A. I went by myself, sir.

15 Q. You went by yourself?

16 A. Yes, sir.

17 Q. And what was the property you checked out?

18 MR. AMPAR&Aacute;N: Objection, relevance.

19 THE COURT: Well --

20 MR. BEVAN: I'll rephrase it.

21 THE COURT: Wait. Okay. You have actually made an  
22 objection as to relevance to this whole line of questioning,  
23 and I have overruled it. So you don't have to continue to make  
24 the same objection for each question on the same subject.

25 MR. AMPAR&Aacute;N: Okay.

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Rudman - Direct / Bevan

1 THE COURT: Go ahead.

2 BY MR. BEVAN:

3 Q. Did you go to San Francisco on Mr. Rosenthal's behalf and  
4 look at a piece of property for potential acquisition by  
5 Mr. Rosenthal?

6 A. Yes, sir.

7 Q. And where was that property?

8 A. It was at the edge of McLaren Park.

9 Q. And how did you know what property to go look at?

10 A. Mr. Rosenthal gave me the address.

11 Q. And was this a piece of property that Mr. Rosenthal was  
12 thinking about buying?

13 A. He was interested in finding out about it.

14 Q. Um-hum.

15 And did that purchase materialize?

16 A. No, sir.

17 Q. Now, did you have any former connection to the property  
18 known as 1635 or located at 1635 East 22nd Street? Do you know  
19 about that property, the -- which was the Rosenthal's residence  
20 at some point, 1635 East 22nd Street?

21 A. Where the Rosenthals live? And what is your question?

22 Q. Did you have some connection to that property?

23 A. Only that I visited it.

24 Q. Okay.

25 You weren't their realtor with respect to that

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Rudman - Direct / Bevan

1 purchase?

2 A. No, sir.

3 Q. And with respect to the property across the street at 1626

4 East 22nd Street, have you been in that property?

5 A. Yes, sir.

6 Q. And were you involved in the purchase in any way?

7 A. No, sir.

8 Q. Were you consulted or did you give advice in regard to

9 improvements to that property?

10 A. Yes, sir.

11 Q. And when were you consulted or did you give your advice

12 about improvements to that property?

13 A. After the purchase. I don't recall a date.

14 Q. Sometime after the purchase?

15 A. After the purchase, yes, sir.

16 Q. Do you recall when their purchase was?

17 A. No, sir.

18 Q. Do you recall that title to that property was taken in the

19 name of Ed Rosenthal and Jane Klein?

20 MR. AMPAR&Aacute;N: Your Honor, I'm going to object to

21 this client (sic) testifying about outside matters --

22 THE COURT: I don't know whether he has any

23 knowledge or not.

24 BY MR. BEVAN:

25 Q. Do you know how title is held to the property?

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Rudman - Cross / Ampar&aacute;n

1 A. No, sir.

2 Q. Do you know how title was held to their residence at 1635?

3 A. No, sir.

4 MR. BEVAN: That's all I have of Mr. Rudman, Your  
5 Honor.

6 THE COURT: Okay.

7 Cross?

8 CROSS-EXAMINATION

9 BY MR. AMPAR&Aacute;N:

10 Q. Good morning, Mr. Rudman.

11 A. Good morning.

12 Q. You were the real estate agent representing Ed Rosenthal  
13 for the purchase of 1419 Mandela Parkway?

14 A. Yes, sir.

15 Q. And as part of your being there and preparing documents  
16 relevant to the sale or purchase of this property, is it fair  
17 to say that you would indicate somewhere or read from those  
18 documents somewhere the square footage of the building?

19 A. I might have, sir.

20 Q. And in looking at any of the documents that the Federal  
21 Government has asked you to look at, is the square footage of  
22 1419 Mandela Parkway referenced in those documents?

23 A. I do not recall, sir.

24 Q. Hold on for a second.

25 THE COURT: Do you know the approximate square

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Rudman - Cross / Ampar&aacute;n

1 footage of the property?

2 THE WITNESS: Approximately.

3 THE COURT: What is it?

4 THE WITNESS: I believe it's approximately 2000  
5 square feet.

6 BY MR. AMPAR&Aacute;N:

7 Q. Would you have seen an appraisal on the property before --  
8 well, actually -- you were Ed's real estate agent, you had  
9 known Mr. Rosenthal before he contracted with you when he was  
10 buying 1419 Mandela Parkway?

11 A. Yes, sir.

12 Q. And you were Mr. Rosenthal's landlord for his commercial  
13 store called the Hemp Center on Haight Street, correct?

14 A. Yes, sir.

15 Q. And even though that store failed ultimately, Mr. Rosenthal  
16 made good on all of his obligations to you?

17 A. Yes, sir.

18 Q. And you said that after the close of escrow you were in --  
19 after the close of escrow you were in the 1419 Mandela Parkway  
20 approximately six times?

21 A. Yes, sir.

22 Q. And you said that you observed like baby marijuana plants  
23 growing?

24 A. Yes, sir.

25 Q. Did you call the police?

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Rudman - Cross / Ampar&aacute;n

1 A. No, sir.

2 Q. The federal government has asked you questions about  
3 property across or near 1419 Mandela Parkway that Mr. Rosenthal  
4 called you and said there is some kind of real estate  
5 investment opportunity?

6 A. Yes, sir.

7 Q. Did it go any further than that?

8 A. Not further than a phone call.

9 Q. Did people call you as a real estate agent about potential  
10 real estate opportunities that they come across that are in  
11 their neighborhood?

12 A. Yes, sir.

13 Q. Anything strange or unusual about that?

14 A. No, sir.

15 Q. Anything criminal about that?

16 A. No, sir.

17 Q. And you said that you were asked to give some advice on  
18 improvements for 1626 East 22nd Street?

19 A. Yes, sir.

20 Q. And you did, in fact, give your advice on that -- those  
21 matters?

22 A. Yes, sir.

23 Q. And anything strange or unusual about people coming to you  
24 in your experience as a -- for 30 years as a real estate  
25 professional asking your advice on what they can do to improve

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Rudman - Cross / Ampar&aacute;n

1 the value of their property?

2 A. Not at all, sir.

3 Q. In dealing with the Rosenthal purchase of 1419 Mandela  
4 Parkway, is it fair to say, Mr. Rudman, that most of your  
5 contact was actually with Jane Klein and not Mr. Rosenthal?

6 A. Not -- no, sir, that was not the case with the purchase.

7 Q. Okay.

8 Did it appear everything seemed to be on the up and

9 up to you?

10 A. In what manner?

11 Q. Well, did you -- was there anything about the -- anything  
12 about the transfer of the property from the seller to  
13 Mr. Rudman?

14 A. I'm Mr. Rudman, sir.

15 Q. I'm sorry.

16 From the owner to Mr. Rosenthal that concerned you?

17 A. No, sir.

18 Q. And, in fact, you have a real estate license, correct?

19 A. Yes, sir.

20 Q. And that's monitored by the State of California, correct?

21 A. Yes, sir.

22 Q. So if you are to engage in any kind of bad act or wrongful  
23 conduct or that kind of thing, the state or government can come  
24 here and take away your privilege to do what it is you do to  
25 support yourself and your family?

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Fay - Direct / Bevan

1 A. Yes, sir.

2 Q. You wouldn't do that, would you?

3 A. I hope not, sir.

4 MR. AMPAR&Aacute;N: Thank you, Your Honor. I have no  
5 further questions.

6 MR. BEVAN: No questions.

7 THE COURT: Thank you, Mr. Rudman.

8 Okay, call your next witness.

9 MR. BEVAN: The United States would call DEA Special  
10 Agent Chris Fay, F-a-y.

11 CHRISTOPHER FAY,

12 called as a witness for the plaintiff, having been duly sworn,

13 was examined and testified as follows:

14 THE CLERK: State your full name, spell your last  
15 name for the record.

16 THE WITNESS: Christopher Fay, F-a-y.

17 DIRECT EXAMINATION

18 BY MR. BEVAN:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. Are you a DEA special agent?

22 A. Yes, I am.

23 Q. And how many years have you been so employed?

24 A. Since January of 2000.

25 Q. And are you currently assigned to a location or to an

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Fay - Direct / Bevan

1 office outside the State of California?

2 A. Yes, I am.

3 Q. Back in the period of 2001, 2002, were you assigned here in

4 San Francisco?

5 A. Yes.

6 Q. Were you assigned to the marijuana group in this building?

7 A. Not at that time.

8 Q. Okay.

9 Were you ever assigned to the marijuana group?

10 A. Yes, I was.

11 Q. During what period of time?

12 A. From July of 2003 until December of 2006.

13 Q. Okay.

14 Now, focusing your attention to the date of

15 January 9th, 2002, do you have that date in mind?

16 A. Yes, I do.

17 Q. On that date, did you participate in a purchase of  
18 marijuana plants at the Harm Reduction Center?

19 A. Yes, I did.

20 Q. And was your role in the capacity as an undercover agent?

21 A. Yes.

22 Q. And do you understand me to say or to mean by undercover  
23 agent that you took on or pretended to have a role of a  
24 purchaser of marijuana?

25 A. Yes.

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Fay - Direct / Bevan

1 Q. And did you assume an undercover name, that is a name that  
2 wasn't your real name?

3 A. Yes.

4 Q. And what was your name that day for that transaction?

5 A. Craig.

6 Q. And did you go to the Harm Reduction Center --

7 A. Yes.

8 Q. -- that day?

9 A. Yes.

10 Q. Did you go inside that day with -- with the intention, an  
11 objective of completing a purchase of plants inside the Harm  
12 Reduction Center?

13 A. Yes.

14 Q. And did you, in fact, participate in the purchase of  
15 approximately 400 plants or so inside the Harm Reduction Center  
16 that day?

17 A. Yes.

18 Q. And was money tendered to someone inside Harm Reduction  
19 Center, cash for payment of those plants?

20 A. Yes.

21 Q. And how much was paid for these plants?

22 A. \$3600.

23 Q. And was that DEA money that was used for the purchase?

24 A. Yes, it was.

25 Q. And for undercover purchases, isn't it correct that the DEA  
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Fay - Direct / Bevan

1 from time to time will utilize Government money to purchase a  
2 controlled substance in the course of an investigation?

3 A. Yes.

4 Q. In an undercover buy like this?

5 A. Yes.

6 Q. Were you wearing a wire, that is, something that was  
7 transmitting what you said to others that -- other agents that  
8 were monitoring the transaction?

9 A. Yes.

10 Q. And is it fair to say that the wire that you were wearing  
11 was doing two things, it was recording what was being said, and  
12 also it was transmitting to other agents so they could monitor  
13 what was being said?

14 A. That's correct.

15 Q. The monitoring aspect is one of the purposes of that, among  
16 others, in essence to keep track of your situation in an  
17 undercover capacity?

18 A. Yes.

19 Q. Such that if something went wrong, or if there was danger,  
20 theoretically the idea is that those that are listening could  
21 respond to your situation; is that correct?

22 A. Yes.

23 Q. In point of fact, here nothing of that nature occurred; is  
24 that correct?

25 A. That's correct, it did not.

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Fay - Direct / Bevan

1 Q. There was no violence or threats or anything like that --

2 A. Correct.

3 Q. -- directed to you; is that true?

4 A. Correct.

5 Q. And inside the Harm Reduction Center that day -- by the  
6 way, what time approximately did you -- did you go inside the  
7 Harm Reduction Center?

8 A. It was a little after 3:00 p.m.

9 Q. Okay.

10 And did you write a report following the completion  
11 of this transaction where you reflected from your perspective  
12 what had occurred inside the Harm Reduction Center in  
13 connection with this purchase?

14 A. Yes. Yes, I did.

15 Q. And have you -- you reviewed that report in connection with  
16 your testimony here this morning?

17 A. Yes.

18 Q. And had you looked at a picture of Richard or Rick Watts  
19 before you went into the Harm Reduction Center?

20 A. Yes.

21 Q. Did you see Rick Watts there that day?

22 A. I did.

23 Q. And the person that you had a conversation with inside, did  
24 that person identify himself or herself to you?

25 A. Yes.

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1 Q. And what was that name?

2 A. Steve.

3 Q. Steve.

4 And was -- how would you describe Steve, physical  
5 description?

6 A. Approximately 6 feet tall, 6 feet 2 perhaps. Medium build.

7 I don't --

8 Q. White male?

9 A. White male.

10 Q. And was he the person that was -- that the money was given  
11 to in exchange for the plants?

12 A. Yes.

13 Q. When you went in there, did you see -- did you see growing  
14 marijuana plants?

15 A. I did.

16 Q. And can did you see an area or a tray or some sort of a  
17 cart where you saw plants?

18 A. Yes, I did.

19 Q. Okay.

20 And what area did you see plants?

21 A. It was on the -- what I refer to as the north side of room  
22 number 3, which was a back room.

23 Q. Were you inside that room?

24 A. Yes, I was.

25 Q. And do you know if that room led to or was in the vicinity

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1 of a staircase down into the basement?

2 A. On the opposite end of the room, what I refer to as the  
3 south end of that room, there was a doorway which people were

4 coming and going. And based on conversations I had with Steve  
5 and others in the room, it was my understanding that that  
6 doorway went down to some kind of a basement or room  
7 underneath.

8 Q. Was there a reference to whether there was a grow room  
9 downstairs?

10 A. Yes, there was.

11 Q. Not counting the 400 or so plants that you participated in  
12 purchasing that day, how many -- were there additional plants  
13 beside those that were left after your purchase, to your  
14 observation?

15 A. I was unable to count each and every plant at the time,  
16 just based on what you could see, I estimated that there were  
17 an additional 100 to 200 plants.

18 Q. So your estimate, just looking at it without counting them,  
19 was there -- before the purchase there was approximately 5- to  
20 600 plants, would that be a fair estimate?

21 A. That was my estimate, yes.

22 Q. And were there lights in the area of these plants, not  
23 necessarily grow lights but were there lights? Could you say  
24 that these plants were under lights in some fashion?

25 A. The room was lighted.

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Fay - Direct / Bevan

1 Q. But not necessarily under grow lights; is that correct?

2 A. Not that I recall.

3 Q. And the plants that you purchased or participated in the  
4 purchase, did you notice whether or not there were any stakes  
5 in the plants?

6 A. I did recall that some of the -- some of the grow mediums

7 that they were in did have white stakes.

8 Q. Did -- was there any reference to a per plant price that  
9 was being paid for these plants?

10 A. Yes.

11 Q. And what was that?

12 A. Steve told me that if we were buying 200 or fewer plants,  
13 it would be \$10 per plant. For between 201 and 600 plants, it  
14 would be \$9 per plant, and if we purchased more than 600, it  
15 would be \$8 per plant.

16 Q. So there was a volume discount?

17 A. Yes.

18 Q. And were you at some point either at the time of the  
19 purchase or soon after the purchase, given a receipt for the  
20 plants and itemization by type of plant that was purchased?

21 A. Yes. I was.

22 THE COURT: What number is this?

23 MR. BEVAN: 74D, Your Honor.

24 BY MR. BEVAN:

25 Q. Showing you, Agent Fay, Exhibit 74D for identification,

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Fay - Direct / Bevan

1 there is an evidence tag opposite this envelope. It refers to  
2 exhibit and then acquired by SA Chris Fay at 52 6th Street, San  
3 Francisco, California, with the date of 1/9/02; is that Chris  
4 Fay, is that a reference to you?

5 A. It is.

6 Q. Can you take a look at these two pages and tell me whether  
7 or not these are the two pages you were given in connection  
8 with this purchase?

9 A. I believe that they are.

10 MR. BEVAN: I would offer 74D in evidence, Your

11 Honor.

12 THE COURT: Okay. Admitted without objection.

13 (Plaintiff's Exhibit 74D was received in  
14 evidence.)

15 BY MR. BEVAN:

16 Q. While the screen is warming up, would it be fair to say,  
17 Agent Fay, that someone else accompanied you into the Harm  
18 Reduction Center that day in connection with this purchase?

19 A. Yes.

20 Q. And was that person identified by the reference to a  
21 confidential source in your report?

22 A. Yes.

23 Q. And did that person -- was that person in your company at  
24 various times inside the Harm Reduction Center?

25 A. Yes.

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Fay - Direct / Bevan

1 Q. And when the transaction was completed, did you assist in  
2 taking the plants from the Harm Reduction Center?

3 A. Yes.

4 Q. Did you assist in carrying the plants out of the place?

5 A. Yes.

6 Q. And how were they boxed or packaged, if they were?

7 A. They were -- the plants were in plastic trays which were  
8 set inside of the cardboard boxes so that the plants would not  
9 tip over.

10 Q. Okay.

11 Did you see how many? How many --

12 A. How many plants?

13 Q. How many boxes were they in?

14 A. A total of six cardboard boxes.

15 MR. BEVAN: We are having technical difficulties.

16 BY MR. BEVAN:

17 Q. Agent Fay, I've got on the screen on the ELMO there, page 1  
18 of Exhibit 74D. And this is the first page of that -- the two  
19 pages you received; is that correct?

20 A. Yes.

21 Q. And it's got the name of 6th Street Harm Reduction Center  
22 with the address of 52 6th Street. It says, "400 clones of  
23 mixed variety at \$9 each," which would confirm what you said  
24 about \$9 per plant; is that correct?

25 A. Yes.

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Fay - Direct / Bevan

1 Q. And then total paid in full \$3600 and there is a signature  
2 here, is that the signature of the person Steve that you were  
3 dealing with?

4 A. Yes.

5 Q. And page 2 of this exhibit -- actually, not all of it shows  
6 up on the screen at once, so we'll just take it a little bit at  
7 a time.

8 Is page 2 basically an itemization of the different  
9 strains or types of plants in the -- and the numbers of those  
10 respective strains and types listed there; is that correct?

11 A. Yes, it is.

12 Q. And for example, the first one is Ultra Skunk, do you see  
13 that?

14 A. Yes.

15 Q. J-2 and so forth; is that correct?

16 A. Yes.

17 Q. And then on the bottom, Romulan is one of the types; is

18 that correct?

19 A. Yes.

20 Q. And then on the bottom there appear to be directions,

21 correct?

22 MR. AMPAR&Aacute;N: I'm going to object as leading.

23 MR. BEVAN: I'll rephrase.

24 BY MR. BEVAN:

25 Q. Below the line here, can you tell the Court and the jury

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Fay - Direct / Bevan

1 what those are a reference to, if you know?

2 A. Those are some notes that Steve provided to me during my  
3 time inside the Harm Reduction Center. I spoke extensively  
4 with Steve about various cultivation methods, and he talked to  
5 me about varying pH levels and nutrient levels, water and  
6 lighting information, temperature, and those notes at the  
7 bottom are a reference to some of the things we discussed.

8 Q. Okay.

9 And the handwriting on this page 2, do you know  
10 whose handwriting that is?

11 A. That was written out by Steve in my presence.

12 Q. Okay.

13 And do you know what this word I'm pointing to is?

14 A. I believe that is "veg," v-e-g.

15 Q. Is that an abbreviation for some bigger word?

16 A. Yes. It refers to the vegetative stage of growth in  
17 marijuana cultivation.

18 Q. Okay.

19 What about the second word here?

20 A. "Bloom."

21 Q. What was that a reference to?  
22 A. It's another stage in the growth cycle of marijuana plants.  
23 Q. And these are pH references; is that correct?  
24 A. Yes.  
25 Q. And so was he giving you advice on growing?

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Fay - Direct / Bevan

1 A. Yes, that would be fair to say.  
2 Q. And when you left the Harm Reduction Center that day,  
3 approximately what time did you leave? Do you recall?  
4 A. I recall it was around 4:00 p.m.  
5 Q. And soon after you left, did there come a point where you  
6 transferred custody of the plants and the receipt to Special  
7 Agent Jon Pickette?  
8 A. Yes.  
9 Q. And where did that occur, do you recall?  
10 A. I believe it was a parking lot of a business, south of  
11 Market area. I don't recall the exact location.  
12 Q. Okay.  
13 How much time elapsed between the time you left the  
14 Harm Reduction Center and transferred custody of the plants and  
15 the receipt to Special Agent Pickette?  
16 A. Five to ten minutes, perhaps.  
17 Q. And did you count the plants before you turned them over to  
18 Agent Pickette?  
19 A. No, I did not.  
20 MR. BEVAN: Your Honor, I believe those 405 plants  
21 are in evidence, just wanted to verify that.  
22 Exhibit 74A.  
23 THE COURT: 74A is admitted.  
24 MR. BEVAN: I have nothing further of Agent Fay,

25 Your Honor.

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Fay - Cross / Ampar&aacute;n

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MR. AMPAR&Aacute;N:

4 Q. Good morning, Agent Fay.

5 A. Good morning.

6 Q. You say that you are a DEA agent?

7 A. Yes, sir.

8 Q. Employed by the Federal Drug Administration?

9 A. The Drug Enforcement Administration, yes.

10 Q. You have been so employed since January of 2000?

11 A. Yes.

12 Q. And, again, there is no difference between a DEA agent and

13 a DEA special agent, correct?

14 A. Correct.

15 Q. And you currently work outside of California?

16 A. Yes.

17 Q. Do you work in a -- you are still working for the DEA?

18 A. Yes.

19 Q. Are you working in a state that has medical marijuana laws?

20 MR. BEVAN: Irrelevant, Your Honor.

21 THE COURT: Sustained.

22 BY MR. AMPAR&Aacute;N:

23 Q. You say that you were a member of the marijuana group?

24 A. Yes, that was what it was known to within the DEA in

25 San Francisco.

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Fay - Cross / Ampar&aacute;n

1 Q. So there is a specific unit within the DEA -- I'm sorry, a

2 specific unit within the City of San Francisco called the --  
3 I'm sorry, called the marijuana group?

4 A. Yes.

5 Q. Is there a group that is designated to address California  
6 laws?

7 MR. BEVAN: Irrelevant.

8 THE COURT: Sustained.

9 BY MR. AMPAR&Aacute;N:

10 Q. You said that you assumed a role by the name of Craig?

11 A. Yes.

12 Q. And you did that in advance of your entry into the Harm  
13 Reduction Center on January 9th, 2002?

14 A. Yes.

15 Q. Was Craig a character that you made up or was Craig a  
16 character that was created and handed to you by some other  
17 person?

18 A. No, Craig was my own invention.

19 Q. Okay.

20 In terms of your own invention, what ailment did  
21 Craig suffer from?

22 MR. BEVAN: Irrelevant.

23 THE COURT: I'll allow it.

24 Was it discussed -- I'm sorry. It may come in  
25 subject to a motion to strike.

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Fay - Cross / Ampar&aacute;n

1 MR. AMPAR&Aacute;N: Okay.

2 BY MR. AMPAR&Aacute;N:

3 Q. You understood that -- you were changing your name to gain  
4 entry into a club -- into a dispensary, correct?

5 A. Yes.

6 Q. And you knew that ahead of time?

7 A. Yes.

8 Q. You assumed a character or role to get in?

9 A. Yes.

10 Q. And you knew that the entrance and admission into that  
11 place was going to be regulated and restricted to people who  
12 had --

13 MR. BEVAN: Assumes facts not in evidence.

14 BY MR. AMPAR&Aacute;N:

15 Q. Did you know that you were going to have difficulty or not  
16 be allowed in unless you had some kind of medical ailment or  
17 prescription?

18 A. No, I did not know that.

19 Q. Okay.

20 So regardless of not knowing that, you created an  
21 identity anyway?

22 THE COURT: Well, not knowing what?

23 BY MR. AMPAR&Aacute;N:

24 Q. Not knowing there was going to be any kind of restriction  
25 to your admission to the dispensary --

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Fay - Cross / Ampar&aacute;n

1 THE COURT: That's a non sequitur. He simply said  
2 he didn't know that there was a restriction for medical  
3 purposes. That's what he said.

4 MR. AMPAR&Aacute;N: Okay.

5 THE COURT: He created an identity, not because of  
6 what you just said, but for other reasons.

7 BY MR. AMPAR&Aacute;N:

8 Q. Why did you create an identity?

9 A. One of the first things I did upon assignment to San  
10 Francisco in 2000 or it may have been late 2000, I obtained a  
11 false California State driver's license for the purpose of  
12 doing undercover work, which I've used on many different  
13 undercover operations, including this one.

14 Q. And you remained a Craig?

15 A. Yes.

16 Q. During that undercover period?

17 A. I've used that on numerous occasions.

18 Q. Okay.

19 A. As well as other undercover names, but for this particular  
20 date, I chose to use Craig.

21 Q. Did you have to execute any documents to get that false  
22 license or is that provided to you as a component of your  
23 employment through the Federal Drug Administration?

24 A. It's something that was coordinated through -- through our  
25 agency.

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Fay - Cross / Ampar&aacute;n

1 Q. But you had no understanding that admission into the  
2 dispensary was going to be restricted to people who had  
3 physician authorizations?

4 A. I don't recall that that was discussed.

5 Q. And it didn't raise any issue for you in terms of that the  
6 place you were entering was called the Harm Reduction Center?

7 A. No.

8 Q. You testified that while you were engaged in this  
9 undercover act of entering the Harm Reduction Center, you had  
10 purchased 405 clones?

11 A. Yes.

12 Q. And you had, before entering the club, had some kind of  
13 contact so that you knew how much currency to bring, correct?

14 A. Yes.

15 Q. When did you -- how soon before the January 9th, 2002 entry  
16 into the Harm Reduction Center did you make that investigatory  
17 interview or whatever it is you did to find out what the price  
18 was going to be?

19 A. My recollection is that I found out that day.

20 Q. You were wearing a wire transmitter when you went into the  
21 Harm Reduction Center?

22 A. Yes.

23 Q. And the Government has asked you about a basis for a  
24 transmitter being -- I perceive it to be officer safety, to be  
25 concerned to know what's going on in case something happens to

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1 you?

2 A. That's one -- one reason for that, yes.

3 Q. They said in case there is trouble?

4 A. Yes.

5 Q. Have you ever had trouble in a dispensary?

6 A. Not that -- that -- in a way that my safety was threatened,  
7 no.

8 Q. Okay.

9 No sick or ailing patients ever tried to chase you  
10 out?

11 MR. BEVAN: Irrelevant.

12 THE COURT: I'll allow it.

13 BY MR. AMPAR&acute;N:

14 Q. You said that the individual at the Harm Reduction Center  
15 that was assisting you was a gentleman by the name of Steve?

16 A. Yes.

17 Q. Did you ever ascertain Steve's last name?

18 A. No, I did not.

19 Q. Did anyone acting with you out of the agents involved with  
20 you do anything to investigate Steve further?

21 A. I don't know.

22 Q. You -- you testified that the signature on the receipt was  
23 Steve's, correct?

24 A. Yes.

25 Q. Did Steve actually sign that document in front of you?

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1 A. Yes, he did.

2 Q. But there is no computer printed name, it's just a line and  
3 a signature?

4 A. Correct.

5 Q. Did Steve go on to a computer to generate that document and  
6 print it out in your presence?

7 A. No, not in my presence.

8 Q. Showing you what has been marked as 74D, that was the  
9 receipt that you received?

10 A. Yes, sir.

11 Q. And is it fair to say that the number of clones and prices  
12 are already preprinted on the form and the only thing that was  
13 added is a signature?

14 A. Yes.

15 Q. Was that document prepared and present for you when you  
16 arrived?

17 A. No.

18 Q. So at some point after speaking with you and negotiating

19 the purchase of those clones, Steve went and produced that  
20 form, came back and signed it and gave it to you?

21 A. Yes.

22 Q. Prior to January 9th, 2002, had you ever been in the Harm  
23 Reduction Center before?

24 A. No, I had not.

25 Q. When you were in the Harm Reduction Center on January 9th,  
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1 2002, did you see Rick Watts?

2 A. Yes, I did.

3 Q. When you were in the Harm Reduction Center on January 9th,  
4 2002, did you see Bob Martin?

5 A. I don't know.

6 Q. Would looking at your report from January 9th, 2002,  
7 refresh your recollection as to whether or not you saw Bob at  
8 the club -- well, actually, just says Bob -- let me ask you  
9 this -- well, let me ask you, would looking at a report refresh  
10 your recollection as to who was present?

11 A. Yes.

12 Q. Can I ask you to look at your report, paragraph 16.

13 MR. AMPAR&acute;N: For Counsel, it's Bates Number 42.

14 And the last sentence.

15 (Counsel confer.)

16 BY MR. AMPAR&acute;N:

17 Q. Having had a chance to look at that -- let me ask this:

18 Are you familiar with the name Bob Martin?

19 A. I am.

20 Q. Have you seen a person that you know to be Bob Martin?

21 A. Yes.

22 Q. Have you seen a person today that you know to be Bob

23 Martin?

24 A. Yes.

25 Q. Having looked at paragraph 16 of your report, did that

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1 refresh your recollection as to whether or not you saw Bob  
2 Martin in the Harm Reduction Center on January 9th, 2002?

3 A. No, it did not.

4 Q. While you were in the Harm Reduction Center on January 9th,  
5 2002 you met a man -- you identified his father, Nazarene?

6 A. That is how he was introduced to me.

7 Q. Okay.

8 When you purchased these clones from the Harm  
9 Reduction Center, who did you tender the currency to?

10 A. I did not tender the currency to anyone.

11 Q. You did not technically purchase -- who tendered the money?

12 A. The confidential source who had accompanied me in and had  
13 the money.

14 Q. Is that why the receipt doesn't reflect a sale to someone  
15 named Craig because it was a sale to the confidential source?

16 A. I can't answer why there is not a name on the receipt. The  
17 confidential source and I were -- were together for most of the  
18 time inside, so...

19 Q. Did the confidential source know Steve?

20 A. My recollection is that the confidential source did not  
21 know Steve.

22 Q. After January 9th, 2002, did you return to the Harm  
23 Reduction Center to purchase marijuana from Rick Watts?

24 A. No. I did not.

25 Q. And you said you purchased 405 plants and that you

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1 estimated there to be 100 to 200 clones remaining?

2 A. Yes.

3 Q. In the discussion related to the setting of the price per  
4 plant, did Steve indicate to you whether he was giving you a  
5 discount or whether that was Bob Martin's policy?

6 A. My recollection is that he indicated it was his, Steve's  
7 discount.

8 Q. And the -- the receipt, the -- the written record related  
9 to this purchase was handed to you or to the confidential  
10 source?

11 A. To me.

12 Q. And you testified that the purchase price for these 405  
13 clones was \$3600?

14 A. Yes.

15 Q. And the Government asked you whether or not these -- these  
16 dollars were -- were money from the Drug Enforcement Agency and  
17 you said yes?

18 A. The Drug Enforcement Administration, yes.

19 Q. Ultimately, this is taxpayer dollars, correct?

20 A. I -- I don't know what the source is, but I would assume --  
21 that makes sense to me.

22 Q. Did you bring a camera into the Harm Reduction Center when  
23 you entered on January 9th, 2002?

24 A. No, I did not.

25 Q. Did you compensate the confidential source?

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1 A. I did not.

2 Q. Did your agency, to your knowledge?

3 A. I have no -- no knowledge. I don't know.

4 Q. The federal prosecutor asked you about your discussion with  
5 Steve related to page 2 of the document, I believe you still  
6 have that up there.

7 A. Yes.

8 Q. And you described that as an inventory of the items that  
9 you purchased, or the confidential source purchased?

10 A. Yeah, roughly, yeah.

11 Q. Did Steve write that out in your presence or was it  
12 prepared in advance?

13 A. He wrote it out in my presence. As he took the plants from  
14 the shelves to put them in the box, he would write down the  
15 number that he was putting in the box, the strain or the  
16 variety, and then also making a notation of the approximate  
17 number of weeks in the growing cycle.

18 Q. Okay.

19 And did Steve advise you as to how to care for those  
20 clones from the clone stage to the plant stage?

21 A. Yes.

22 Q. And did Steve consult with you about the care for those  
23 plants from the plant stage to the flowering stage?

24 A. Yes.

25 Q. Did Steve consult with you about bringing those plants from

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1 the flowering stage to bud?

2 A. Yes.

3 Q. Did Steve consult with you about how to clone?

4 A. I believe that there was some discussion of that, yes.

5 Q. You did not see Ed Rosenthal inside the Harm Reduction  
6 Center, correct?

7 A. Not to my recollection.

8 Q. And had you seen -- well, let me ask you this: Prior to  
9 your testimony this morning, you had a chance to review your  
10 report?

11 A. Yes.

12 Q. In the five years that have gone by, can you tell us  
13 approximately how many times you have read your report?

14 A. Five or six, perhaps.

15 Q. And how many times have you testified related to  
16 Mr. Rosenthal?

17 MR. BEVAN: Irrelevant.

18 THE COURT: I'll allow it.

19 Go ahead.

20 THE WITNESS: Related to Mr. Rosenthal, I believe  
21 this is the second time.

22 BY MR. AMPAR&Aacute;N:

23 Q. And if you would have seen Mr. Rosenthal inside of the Harm  
24 Reduction Center on January 9th, 2002, is it fair to say that  
25 that would be something you included in your report?

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1 A. No.

2 Q. Is it fair to say, Agent Fay, that you have no information  
3 as to how those clones that you purchased arrived at Harm  
4 Reduction Center?

5 A. That's correct.

6 Q. And that you have no information about who grew those  
7 clones?

8 A. That's correct.

9 Q. And you have no information about how long those clones

10 were at Harm Reduction Center before your purchase?

11 A. That's correct.

12 Q. You have no information as to whether or not those clones  
13 were grown on site at 62 -- I'm sorry, 52 6th Street, the Harm  
14 Reduction Center?

15 A. That's correct.

16 Q. You have no information or evidence that Mr. Rosenthal is  
17 involved with or was involved with the Harm Reduction Center?

18 A. That's correct, I do not.

19 Q. Out of the 100 to 200 clones that you said were left at the  
20 Harm Reduction Center, do you have any evidence that those  
21 clones were produced by Mr. Rosenthal?

22 A. No.

23 Q. Do you have any testimony or evidence as to what ultimately  
24 happened with those 100 to 200?

25 THE COURT: You are asking based upon his first-hand  
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1 knowledge, right?

2 MR. AMPAR&Aacute;N: Yeah.

3 THE COURT: Not anything that he may have read or  
4 been told?

5 MR. AMPAR&Aacute;N: Just if he knows what happened.

6 THE COURT: Sorry.

7 MR. AMPAR&Aacute;N: Just if he knows what happened.

8 THE COURT: You can learn things many different  
9 ways. One is somebody can tell you something, you can read  
10 something. You are asking him based on his observations, all  
11 these questions are based upon this witness' observations?

12 BY MR. AMPAR&Aacute;N:

13 Q. Based upon your five senses; sight, smell, hearing --

14 THE COURT: No, not based on five sense because, in  
15 fact, you can actually read something --

16 MR. AMPAR&Aacute;N: That would be sight.

17 THE COURT: -- and be informed. So the question is  
18 whether or not he observed anything at that scene which  
19 indicated whatever you want to demonstrate.

20 MR. AMPAR&Aacute;N: Okay.

21 BY MR. AMPAR&Aacute;N:

22 Q. Did you observe anything with your sense of sight, anything  
23 that connected Mr. Rosenthal to the 100 to 200 clones that  
24 remained?

25 THE COURT: At the scene at the time?

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1 BY MR. AMPAR&Aacute;N:

2 Q. At the scene at the time with your own personal eyes.

3 A. No.

4 Q. You knew that it was going to be necessary for you to lie  
5 in order to participate in this purchase, correct?

6 A. Yes.

7 Q. You knew that the clones that you were purchasing were  
8 destined for patients, correct?

9 MR. BEVAN: Your Honor, that's irrelevant.

10 THE COURT: Well, did you know anything about what  
11 the purpose of the clones were?

12 THE WITNESS: No. I did not.

13 BY MR. AMPAR&Aacute;N:

14 Q. Had you been in California -- you said you were a DEA agent  
15 in 2000?

16 A. Yes.

17 Q. Were you -- were you in California from the period of 1997  
18 to 2000?

19 MR. BEVAN: Irrelevant.

20 THE COURT: Sustained.

21 MR. AMPAR&Aacute;N: If I could just have a moment?

22 No further questions, Your Honor.

23 MR. BEVAN: No questions, Your Honor.

24 THE COURT: Okay. Thank you very much. You are  
25 excused.

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1 So ladies and gentlemen, let's take our recess.

2 We'll be in recess until 20 after 10:00.

3 Remember the admonitions given to you; don't discuss  
4 the case with anyone, allow anyone to discuss it with you, form  
5 or express any opinion.

6 (Jury out at 10:03 a.m.)

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

9 MR. BEVAN: Two things, Your Honor. One is Counsel  
10 is asking questions that are in areas that Your Honor  
11 specifically ruled on. For example, questions are you working  
12 in a state that has medical marijuana, and are these -- and  
13 secondly, are these -- were these plants destined for medical  
14 patients.

15 Your Honor has ruled that the ultimate consumer here  
16 is irrelevant. And the fact he works in the state of  
17 Washington that has medical marijuana is completely irrelevant,  
18 and he is putting the Government in the posture of standing up  
19 and making objections. And it's highlighting that it's the  
20 Government that is excluding this.

21                   And I don't think that was the intention of Your  
22 Honor at the time you made these rulings. I mean --

23                   THE COURT: No, but I think there was an objection,  
24 I sustained it, right, as to where he presently works and do  
25 they have marijuana laws.

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1                   As to the ultimate purpose -- did I understand this  
2 witness' testimony he didn't say anything about being asked for  
3 a medical certificate or a medical --

4                   MR. BEVAN: No, there was no indication that he was  
5 asked. So -- but you allowed him to ask the question whether  
6 the plants were destined for patients. And --

7                   THE COURT: Yeah, that was probably a mistake. I  
8 probably shouldn't have allowed it. I didn't know where he was  
9 going on it.

10                  MR. BEVAN: But, secondly, Rick Watts, Richard Watts  
11 is not here. I would tender up the original of the subpoena  
12 requiring his presence in this trial. I left him a message on  
13 his voicemail last night on his phone somewhere around 6:00,  
14 6:30 to be here at 8:15. I was otherwise going to ask Your  
15 Honor for a warrant.

16                  My DEA agent, Dave Mateer, went to his residence and  
17 Mr. Watts assured him he would be here this morning. Agent  
18 Mateer told him to be here at 8:15. And the days leading up to  
19 today, he has not been responsive to voicemails. And so at  
20 this time, based on the fact that he is subject to the  
21 subpoena, I would ask for the issuance of an arrest warrant to  
22 compel his attendance here at trial.

23                  He would be our next witness.

24 THE COURT: Okay. Well, that would be granted.

25 MR. BEVAN: Thank you.

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1 THE COURT: So Mr. Watts won't be here, so we have  
2 Mr. Martin?

3 MR. BEVAN: Yes, Your Honor.

4 THE COURT: And then what?

5 MR. BEVAN: And then I'm going to offer some  
6 telephone records and then ask Your Honor in terms of our case  
7 to allow us time to get Mr. Watts in here to testify. It may  
8 be that we can't have him here until tomorrow morning.

9 THE COURT: Okay, well, I'll allow that.

10 So are we ready to -- I don't know -- how long will  
11 Mr. Martin be?

12 MR. BEVAN: The direct is probably a half hour.

13 MR. AMPAR&Aacute;N: We'll probably be on with Mr.  
Martin

14 until lunch at least.

15 THE COURT: Lunch at least? I guess that depends  
16 when we have lunch. Let's see, okay.

17 At any rate, for this afternoon we will proceed with  
18 the defense.

19 MR. AMPAR&Aacute;N: Yes, Your Honor.

20 MR. BEVAN: That's all I have, Your Honor.

21 THE COURT: Okay.

22 On the subject of the money orders, I'm not going to  
23 at this point permit those other money orders to come in  
24 dealing with the school and so forth. I don't know whether or  
25 not it will become relevant. If Ms. Klein testifies, but it

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1 may become relevant at that point. And -- depending on what  
2 she says. I think it's somewhat tangential.

3           There is a lot of evidence of money orders and so  
4 forth. I don't know that it particularly advances anything.  
5 It's largely -- it's just one more evidence of paying expenses  
6 with money orders. There is plenty of evidence of that.

7           MR. BEVAN: Okay.

8           THE COURT: So unless it has direct relevance, I'm  
9 not going to allow it in the Government's case in chief, though  
10 I may allow it in cross.

11          MR. BEVAN: That's fine.

12          THE COURT: Okay.

13                         (Recess taken at 10:08 a.m.)

14                         (Proceedings resumed at 10:23 a.m.)

15          THE COURT: Are we ready?

16          MR. BEVAN: Yes, Your Honor.

17                         (Jury in at 10:23 a.m.)

18          THE COURT: Okay, let the record reflect all jurors  
19 are present. The parties are present.

20           You may call your next witness.

21          MR. BEVAN: The United States would call  
22 Robert Martin, M-a-r-t-i-n.

23                         ROBERT MARTIN,  
24 called as a witness for the plaintiff, having been duly sworn,  
25 was examined and testified as follows:

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1           THE CLERK: State your full name, spell your last  
2 name for the record.

3           THE WITNESS: Robert Wesley Martin, M-a-r-t-i-n.

4

DIRECT EXAMINATION

5 BY MR. BEVAN:

6 Q. Good morning, sir.

7 A. Good morning, Mr. Bevan.

8 Q. How old are you?

9 A. Fifty-one.

10 Q. Mr. Martin, prior to today is it correct that -- that Judge  
11 Breyer signed an order by which you were compelled to testify  
12 in this matter subject to or by law that nothing you say in  
13 this trial can be used against you directly or indirectly; do  
14 you have that understanding as to the basic concept of the  
15 order of immunity?

16 A. No, I pled the Fifth for four or five months and I was  
17 granted immunity after the trial started.

18 Q. And do you understand that the immunity order that was  
19 issued to you covers -- it's known as use immunity, that is, it  
20 protects you for statements you make?

21 A. Yes.

22 Q. As opposed to conduct you engage in independent of your  
23 statements; is that correct?

24 A. Yes, that's correct.

25 Q. Now, is it accurate that at some point you became involved

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1 in the activities of the Harm Reduction Center at 52 6th Street  
2 in San Francisco?

3 A. Yes, sir.

4 Q. And approximately -- when exactly did you become involved  
5 in the -- well, let me rephrase that.

6 Did there come a point where you caused a new bank  
7 account to be opened in the name of the Harm Reduction Center

8 where you were an authorized signatory on the checking account?

9 A. I was.

10 THE COURT: Would you pull forward?

11 THE WITNESS: Would you repeat the question?

12 BY MR. BEVAN:

13 Q. Was the answer yes?

14 A. Would you repeat the question?

15 Q. Did there come a point where you opened up a new bank  
16 account in the name of the Harm Reduction Center, comma, LLC,  
17 52 6th Street, San Francisco, California, where you had the  
18 authority to write checks on that account?

19 A. Yes, sir.

20 Q. Showing you Exhibit 76A in evidence.

21 MR. AMPAR&Aacute;N: Let's see it.

22 BY MR. BEVAN:

23 Q. Showing you Exhibit 76A in evidence, Mr. Martin, these are  
24 records obtained from Bank of America. And can you take a look  
25 at these records and satisfy yourself that they consist of bank  
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1 statements covering the period January 25 through February --  
2 January 25, 2002, to February 14th, 2002.

3 And then there is a statement following that,  
4 February 15th through March 18th, 2002. March 19 through  
5 April 17, 2002. And it's followed by a deposit slip and then  
6 there are -- there is a canceled check followed by another  
7 deposit slip. A cash in debit document.

8 MR. AMPAR&Aacute;N: Couldn't hear that last part.

9 BY MR. BEVAN:

10 Q. A cash in debit document; another canceled check; another

11 canceled check; another canceled check; and then there is a  
12 notation, "signature card not available."

13           Could you take a look at these and satisfy yourself,  
14 Mr. Martin, that those pertain to a bank account that you  
15 opened sometime in 2002?

16 A. Okay. This seems to be in order. There were only six  
17 checks written to the account because it was only open for  
18 approximately two weeks, so that covers pretty much everything.

19 Q. You need to keep your voice up so the juror in the last --  
20 second row, farthest away from you can hear everything that you  
21 say.

22 A. Okay. Everything seems to be in order. The account was  
23 open and was only open for maybe two to three weeks, and there  
24 were six checks written on the account before it was seized by  
25 the IRS.

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1 Q. Now, the checks that are attached, you signed all these  
2 checks; is that correct?

3 A. I recall six checks from the account.

4 Q. Well, the ones that are attached here, not all six are  
5 attached --

6 A. Right.

7 Q. -- but the ones that are attached you signed them?

8 A. Correct.

9 Q. And for the record, this account number is 0299504906.

10           Now, at the time that you opened this bank account,  
11 was Ken Hayes still around in the vicinity of the Harm  
12 Reduction Center?

13 A. No, sir. But when I say I opened a bank account, I went to  
14 the bank with someone from Harm Reduction Center that already

15 had the account and we added a third account to the original  
16 account is my understanding.

17 Q. Okay.

18 Who did you go with?

19 A. Rick Watts.

20 Q. And Rick Watts is also known as Richard Watts?

21 A. Right.

22 Q. And he was someone, correct, that was associated --  
23 involved with the Harm Reduction Center with Ken Hayes prior to  
24 your arrival, is that your understanding?

25 A. Correct.

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1 Q. And what occasioned or prompted you opening this new  
2 account?

3 A. The money was being taken out of the account from a check  
4 card being used in Canada.

5 Q. Being used in Canada by who?

6 A. Mr. Hayes.

7 Q. And did you understand that Ken Hayes was in Canada as of  
8 January 2002?

9 A. Yes, sir.

10 Q. And do you know the circumstances of -- I'll rephrase that.

11 Did Mr. Hayes leave from this area to go to Canada,  
12 as far as you know?

13 A. As far as I know.

14 Q. Okay.

15 And did you communicate at all with him by telephone  
16 in Canada?

17 A. Yes, sir.

18 Q. And did he indicate during his conversations with you  
19 whether or not he had been in communication with Mr. Ed  
20 Rosenthal?

21 A. Yes.

22 MR. AMPAR&Aacute;N: Objection, hearsay.

23 THE COURT: What period of time?

24 BY MR. BEVAN:

25 Q. What period of time did you have these conversations?

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1 A. January, say, between December and January of '01 and '02.

2 One of the two months or both.

3 MR. AMPAR&Aacute;N: Excuse me. I would retain my  
4 objection and move to strike.

5 THE COURT: These are -- these are statements in the  
6 furtherance of a conspiracy, is that what is --

7 MR. BEVAN: That's my proffer and theory.

8 THE COURT: Proffer.

9 What is the objection?

10 MR. AMPAR&Aacute;N: The multiple levels of hearsay.

11 THE COURT: There is an exception to the hearsay

12 rule for statements in the furtherance of a conspiracy.

13 MR. AMPAR&Aacute;N: So this is going to be limited to  
14 that

14 purpose?

15 THE COURT: That's correct. Well, they are  
16 admissible on that basis. I don't think there is a restriction  
17 on them.

18 BY MR. BEVAN:

19 Q. So during these -- did you have more than one conversation

20 with -- with Ken Hayes?

21 A. Yes, sir.

22 Q. While he was in Canada?

23 A. Yes, sir.

24 Q. And how did you know to get a hold of him or what number to  
25 call him at?

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1 A. There was a number to call in the office there, Rick Watts  
2 gave it to me.

3 Q. Do you know or do you recall the area code of 604 being  
4 Canada?

5 A. It sounds vaguely familiar. That was the number, the 604  
6 area code.

7 Q. During these conversations that you had with Mr. Hayes,  
8 what were you talking to him about?

9 A. About trying to clear up the debt that the club had and get  
10 the things straightened out.

11 Q. And in that context, he mentioned that he was -- that he  
12 had been in contact with Mr. Rosenthal; is that correct?

13 A. Correct.

14 Q. And he had been in contact with Mr. Rosenthal by telephone;  
15 is that correct?

16 A. I wouldn't know how they communicated but that's about the  
17 only way they could.

18 MR. AMPAR&Aacute;N: Objection. Move to strike, lacks  
19 foundation.

20 THE COURT: Well, lay a foundation.

21 BY MR. BEVAN:

22 Q. What was the context in which he indicated he had been  
23 talking to Rosenthal? How did that come up?

24 A. Let's see, Mr. Rosenthal was trying to kick me and Rick

25 out, and I was telling Ken that if we stayed in there, we could  
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1 get his debt cleared up. So evidently, he wanted us to stay  
2 there to get his debt cleared.

3 Q. So the text or context was, if I understand what you just  
4 said, was that -- did Ken Hayes advise you that Mr. Rosenthal  
5 was trying to kick you and Rick Watts out of the club?

6 A. Right.

7 Q. And would it be fair to say that you at that time were  
8 aligned or friends or associates of Rick Watts?

9 A. I had become friends with him because I watched what he was  
10 doing to help people, and I respected him for it. And so I was  
11 trying to stand up and help him out, and I saw somebody push  
12 him around.

13 Q. And Mr. Martin, did Mr. Watts indicate to you whether or  
14 not Mr. Rosenthal had at some point been involved in the PG&E  
15 bill status of the Harm Reduction Center?

16 A. I had been told that the power was turned off and that the  
17 club had no money and that Mr. Rosenthal maybe paid the power  
18 bill.

19 Q. And what?

20 A. For the club.

21 Q. Did he receive anything in exchange for paying the power  
22 bill?

23 A. Mr. Watts mentioned that he was going to be allowed to  
24 possibly grow in there for that or something like that.

25 Q. Grow at the Harm Reduction Center?

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1 A. Use the basement or something like that.

2 Q. Was there, in fact, a grow in the basement of the Harm  
3 Reduction Center?

4 A. There was a place set up for marijuana to be grown. And  
5 there was, at the time of the raid, I would say there was some  
6 in there, nothing really any good or --

7 Q. Okay.

8 Mr. Martin, can you lean forward? Can you see those  
9 there?

10 A. Yes, sir.

11 Q. And do you recognize the sign above the 52 6th Street  
12 there?

13 A. Yes, sir.

14 Q. And in picture A?

15 A. Yes, sir.

16 Q. For the record, this is board or Exhibit 70 in evidence.

17 Do you recognize the area that is depicted in  
18 picture number or letter D?

19 A. Yes, sir.

20 Q. Is that the basement area where you referenced where  
21 marijuana was grown?

22 A. Yes, sir.

23 Q. And you've been in that area during the time you were at  
24 the Harm Reduction Center; is that correct?

25 A. Yes, sir.

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1 Q. And did you, yourself, have conversations with  
2 Mr. Rosenthal as to what amount he claimed he was owed by the  
3 Harm Reduction Center?

4 A. Yes, sir.

5 Q. And at what point did you have those conversations with  
6 Mr. Rosenthal?

7 A. I would say it was in December or January. And I called to  
8 ask how much he was owed, and he said approximately \$7000.

9 Q. He said he was owed approximately \$7000; is that correct?

10 A. Correct.

11 Q. Did he say or was there a discussion of what he was owed  
12 for?

13 A. There was a debt from before I got there, but it was my  
14 understanding that it was for medical marijuana or clones.

15 Q. For plants?

16 A. And possibly for plants and possibly something to do with a  
17 power bill or something like that.

18 Q. Okay.

19 A. He might have been owed for the power bill or Mr. Rosenthal  
20 still owed for the power bill, so there was a discrepancy and  
21 Mr. Watts didn't want me to pay the full 7000.

22 Q. But the bottom line is Mr. Rosenthal claimed that he was  
23 owed \$7000 by Harm Reduction Center; is that correct?

24 A. Correct.

25 Q. Had you seen Mr. Rosenthal on any prior occasions anywhere?

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1 A. Yes, sir.

2 Q. Did there come a point where you were at a location in  
3 Oakland connected to Mr. Rosenthal?

4 A. Yes, sir.

5 Q. And approximately how much time before if you use -- if we  
6 use the search on February 12th, 2002 of the Harm Reduction  
7 Center by DEA as a frame of reference, Mr. Martin, how much  
8 time prior to that had you been in a location connected to

9 Mr. Rosenthal?

10 A. I would say it would have to have been at least a year  
11 earlier.

12 Q. At least a year earlier.

13 On that occasion, were you inside a location where  
14 there was marijuana plants?

15 A. Yes, sir.

16 Q. Showing you, sir, Exhibit 9 in evidence, board 1 of 8. If  
17 you take a look at the building that is depicted there, can you  
18 tell us whether or not you were inside that particular building  
19 that is pictured in photograph C?

20 A. I wasn't paying attention when I was walking in the door,  
21 so I really, really didn't notice the outside of the building  
22 other than it was a little ragged looking, but I could not  
23 definitely say that is the outside of the building I entered.  
24 But it looks very similar.

25 I was talking to someone when I was walking in the

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1 door. I had pulled up in a car and walked right into the door  
2 and didn't really pay attention to the outside of the building  
3 but that is vaguely -- does look like it.

4 Q. Showing you, sir, Exhibit 9, board 2 of 8, a picture of a  
5 open door.

6 Do you recognize or -- do you recognize as having  
7 seen what is depicted on that board?

8 A. It looks familiar. I remember going through a little  
9 entrance --

10 Q. Okay.

11 A. -- just a few feet off the street. The door was just a few

12 feet off the street, so I exited a car and instantly was inside  
13 a building. So I wasn't paying attention to the outside of the  
14 building.

15 Q. And where in Oakland approximately was it?

16 A. I really couldn't say. I don't know Oakland at all.

17 Q. And were there marijuana plants inside?

18 A. Yes, sir.

19 Q. And was Mr. Rosenthal there?

20 A. Yes, sir.

21 Q. And was anyone else there with you?

22 A. Yes, sir.

23 Q. Who was that?

24 A. Father Nazarene, Robert McCormick, and maybe two of  
25 Mr. Rosenthal's employees, and Mr. Rosenthal.

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1 Q. Okay.

2 And when you said two of Mr. Rosenthal's  
3 employees --

4 MR. AMPAR&Aacute;N: Objection, move to strike, lacks  
5 foundation.

6 THE WITNESS: I can't say they were definitely his  
7 employees. They were in there working. I cannot say they were  
8 his employees.

9 BY MR. BEVAN:

10 Q. They were in there working. Did you see them working on  
11 the plants?

12 A. Yes, sir.

13 Q. Did you come to recognize any of those workers when you  
14 were at Harm Reduction Center?

15 A. Just one.

16 Q. Okay.

17 Do you know that person's name or did you refer to  
18 him by name?

19 A. I think his name was mentioned to me by the -- in the last  
20 case before I actually knew his name.

21 Q. Up to that point you didn't know his name?

22 A. I had conversations with him and it might have come up, but  
23 I wouldn't have remembered.

24 Q. Did you ever see him deliver plants to the Harm Reduction  
25 Center?

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Martin - Direct / Bevan

1 A. Yes, sir.

2 Q. And were you shown a California Department of Motor  
3 Vehicle's picture of this person?

4 A. Yes, sir.

5 Q. Showing you Exhibit 90.

6 Mr. Martin, was this the California DMV picture you  
7 were shown and did you initial on the back on January 21st, '03  
8 that you recognized this person?

9 A. Yes, sir.

10 Q. And is this the person you saw when you went to this  
11 location in Oakland that day?

12 A. Yes, sir.

13 Q. Is that the person you saw delivering plants to the Harm  
14 Reduction Center?

15 A. Yes, sir.

16 MR. BEVAN: I would offer into evidence Exhibit 90,  
17 Your Honor.

18 THE COURT: Admitted without objection.

19 (Plaintiff's Exhibit 90 was received in  
20 evidence.)

21 BY MR. BEVAN:

22 Q. Showing you, sir, board 3 of 8 for Exhibit 9, do you  
23 recognize the area that is depicted there around the table  
24 area?

25 A. Yes, sir.

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1 Q. And do you recognize that as an area that you were in when  
2 you were inside the building with Mr. Rosenthal in Oakland as  
3 you have described?

4 A. Yes, sir.

5 Q. Did you actually sit around that table?

6 A. Yes, sir.

7 Q. And was there discussion about Mr. Rosenthal being  
8 interested in another location?

9 A. Couldn't say if the conversation occurred in that  
10 particular room but that's what the whole meeting was about,  
11 Mr. Rosenthal was looking for another location.

12 Q. Was he looking for a location that was bigger or smaller  
13 than the location you were in?

14 A. Bigger.

15 Q. Was he looking for a location that was bigger where there  
16 would be marijuana produced or manufactured inside that new  
17 location?

18 A. It's my understanding that that was the purpose.

19 Q. And did you go --

20 MR. AMPAR&Aacute;N: Actually, I'm going to object, Your  
21 Honor, move to strike as non-responsive.

22 MR. BEVAN: I'll follow-up.

23 BY MR. BEVAN:

24 Q. What -- what -- on what basis can you say that that was the  
25 purpose of the building? Was there a discussion about it?

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1 A. Yes, sir.

2 Q. And did you, in fact, the group of you go look at another  
3 building?

4 A. Yes, sir.

5 Q. Where was this other building?

6 A. It was in Oakland, right near an overpass. I couldn't tell  
7 you the exact location. It was on a dead-end street right near  
8 an overpass.

9 Q. Okay.

10 And how large was the building in relation to the  
11 building that you were in around that table?

12 A. Oh, I would say five times that size.

13 Q. Five times that size?

14 A. I think the approximate square foot was maybe 7000. That  
15 might have been mentioned in conversation.

16 Q. And how long were you either -- counting how long you were  
17 in that building with Mr. Rosenthal where the table is, coupled  
18 with going to check out this potential new site, until you left  
19 Oakland that day, approximately how long did that take?

20 A. I would say just a couple of hours.

21 Q. Now, in the context of your discussions with Mr. Rosenthal  
22 a year later or so, as you have described, in connection with  
23 the Harm Reduction Center, is it your testimony that the \$7000  
24 amount that Mr. Rosenthal said he was owed included amounts for  
25 plants that he -- marijuana plants that he had supplied to the

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1 Harm Reduction Center?

2 A. Yes.

3 Q. And of the \$7000 figure, how much was comprised of what he  
4 owed for plants? Do you recall?

5 A. It was mostly all was for plants.

6 Q. And how much per plant do you know was -- was the  
7 calculation premised on?

8 A. \$5.

9 Q. \$5 per plant. So if you divide 5 into 7000 --

10 MR. AMPAR: Actually, Your Honor, that's  
improper.

11 The witness has testified that some of it was for PG&E.

12 MR. BEVAN: I'll rephrase.

13 BY MR. BEVAN:

14 Q. How much, if any, was accountable for -- attributable to  
15 the PG&E bill?

16 A. Well, it wasn't attributed. I think there was a little  
17 misunderstanding about that. The amount might have been higher  
18 if it had been for the PG&E bill. But since we didn't -- there  
19 was just a discrepancy of how much was owed for PG&E., so we  
20 came up with a figure of \$7000. So money being paid wasn't for  
21 PG&E it was being deducted for PG&E.

22 Q. I see.

23 A. Mr. Rosenthal's debt, so it was taken off, not added on.

24 Q. So is it your testimony that the \$7000 was attributable  
25 entirely to plants?

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1 A. That's my understanding.

2 Q. And was it \$5 per plant?

3 A. Yes, sir.

4 Q. And if you divide \$5 into 7000, does that equal 1400  
5 plants?

6 A. Yes, sir.

7 Q. Okay.

8 And is that your understanding as to the number of  
9 plants for which Mr. Rosenthal was requesting payment?

10 A. Yes, sir.

11 Q. Had there been a discussion between you and Richard Watts  
12 about the condition of the plants that Mr. Rosenthal had  
13 supplied?

14 A. One particular batch there was discussion about.

15 Q. Showing you, sir, Exhibit 75B; did Mr. Watts show you this  
16 letter, this typed letter, addressed to Mr. Rosenthal dated  
17 February 1st, 2002?

18 A. Yes, sir.

19 Q. And was that a letter that Mr. Watts intended or asked you  
20 to deliver to Mr. Rosenthal?

21 A. Yes.

22 MR. BEVAN: I would offer in evidence, Your Honor,  
23 Exhibit 72B.

24 THE COURT: 75B?

25 MR. BEVAN: 75B.

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1 THE COURT: 75B admitted.

2 (Plaintiff's Exhibit 75B was received in  
3 evidence.)

4 BY MR. BEVAN:

5 Q. And would you read out loud, sir, everything that is typed

6 there, loud enough and slowly so everyone can hear what you  
7 say.

8 A. "Mr. Rosenthal" -- this is from Rick Watts, not me.

9 "Mr. Rosenthal, clones which I have received from  
10 you over the last month have been infested with root aphids.  
11 Four customers have complained and two are demanding that I pay  
12 for their entire crops, which were ruined after they introduced  
13 your clones into their crop" it's -- "and intended to be  
14 infested. This proves that the customers were right. I expect  
15 you to make this right financially.

16 "The clones you delivered today are herewith  
17 returned" -- or "returned herewith. I find it hard to believe  
18 that you are unaware of the conditions of these clones before  
19 bringing them into our growing environment.

20 "Be advised that there is much talk of willful  
21 sabotage on your part over a continuing period of time in an  
22 attempt to influence the medicinal market by wiping out  
23 competitors with pests on clones which you provide.

24 "I will refer these growers to you in hopes that  
25 they can learn about possible treatment from you.

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1 "Rick Watts, executive director, HRC."

2 Q. And did you -- did you ever deliver this letter to  
3 Mr. Rosenthal?

4 A. No, sir.

5 Q. And the plants that are referenced there, were those all  
6 the plants that were the issue of the \$7000?

7 A. I'm not sure on that. I know the -- we were talking about  
8 two trays that he brought that were infected.

9 Q. Two trays?

10 A. Two trays. And the other was back before I had arrived  
11 that they were talking about.

12 MR. AMPAR&Aacute;N: Objection. Lacks foundation,  
13 speculation. Multiple hearsay.

14 THE COURT: Well, lay a foundation.

15 BY MR. BEVAN:

16 Q. Did you actually -- was there any occasion where you saw  
17 Mr. Rosenthal delivering plants?

18 A. Yes.

19 Q. And how many occasions, if there was more than one  
20 occasion, where he actually delivered plants?

21 A. I can only think of one.

22 Q. And on the one occasion where he delivered plants, did he,  
23 himself, bring the plants into the Harm Reduction Center?

24 A. Best of my recollection, yes, he did.

25 Q. And how many plants did he bring in?

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1 A. Just two boxes, 50 each tray, 100 plants.

2 Q. Pardon me?

3 A. 100.

4 Q. 100 plants?

5 So did you have an understanding based on  
6 discussions with either Mr. Rosenthal or Rick Watts that the  
7 1400 plants that were at issue in the \$7000 figure accompanied  
8 or pertained to a period before you had arrived there as well?

9 A. Correct.

10 Q. Now, did you issue one or more checks payable to  
11 Mr. Rosenthal to -- that were meant to reduce and/or pay off  
12 that \$7000 amount that Mr. Rosenthal was requesting?

13 A. Yes.

14 Q. Showing you, sir, Exhibit 76C in evidence, the first is a  
15 check -- check number 1006 in the amount of \$3000, dated  
16 2/1/02 payable to Ed Rosenthal. And on the second page of this  
17 exhibit, there is a second check payable to Ed Rosenthal with a  
18 date of 2/1/02, \$1500 that is -- that states in the memo line,  
19 "for consulting fee."

20 Let me first ask you, Mr. Martin, did you sign both  
21 those checks?

22 A. Yes, sir.

23 Q. And were those checks written by you on the new account  
24 that you have testified was opened when you and Mr. Watts went  
25 to Bank of America?

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1 A. Yes, sir.

2 Q. And were those checks intended by you to reduce in part the  
3 amount that Mr. Rosenthal said he was owed?

4 A. Correct.

5 Q. And that was for marijuana plants that he supplied to the  
6 Harm Reduction Center; is that correct?

7 A. That's correct.

8 Q. The second check or that check says "consulting fee"; is  
9 that correct?

10 A. Yes, sir.

11 Q. And how is it that if this was payment for plants, that it  
12 said consulting fee?

13 A. I was instructed to put that down for the reason the check  
14 was written by Mr. Rosenthal.

15 Q. Mr. Rosenthal asked you to put that there?

16 A. Correct.

17 Q. And you -- you went ahead and wrote consulting fee; is that  
18 correct?

19 A. Yes, sir.

20 Q. Knowing it wasn't a consulting fee?

21 A. Correct.

22 Q. Was that dishonest?

23 A. I felt dishonest by doing it.

24 Q. These checks did not clear the bank; is that correct?

25 A. That's correct.

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1 Q. They were returned for nonsufficient funds; is that  
2 correct?

3 A. I don't know which ones were out of the three checks to  
4 Mr. Rosenthal. I don't know which ones actually got returned  
5 and which ones didn't.

6 Q. Okay.

7 A. And another one cleared the bank. The IRS raided the  
8 account and shut it down and the checks could not be cleared.

9 MR. AMPAR&Aacute;N: Your Honor, I'm going to object.  
Move

10 to strike, multiple levels of hearsay.

11 The witness testifies about what happens to the DEA  
12 procedures --

13 THE COURT: I think what he testified to is that  
14 the checks didn't clear.

15 MR. BEVAN: That's correct.

16 THE COURT: Okay. So that can remain. Everything  
17 else goes out.

18 BY MR. BEVAN:

19 Q. Now, Mr. Martin, we have two checks here totaling \$4500; is

20 that correct?

21 A. Correct.

22 Q. Now, your recollection is that you issued a total of how  
23 many checks to Mr. Rosenthal as part of this \$7000 debt pay  
24 off?

25 A. There were -- the 7000 was in two checks. One for 4- and

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1 one for 3000.

2 Q. And we don't -- what's the check for \$1500?

3 A. That was something extra. That might have been extra  
4 plants where we had the discrepancy about the payment. I'm  
5 kind of confused on that \$1500 check.

6 MR. AMPAR&Aacute;N: Your Honor, I'm going to object and  
7 move to strike.

8 THE COURT: Well, he is saying he does not know. He  
9 is saying it might have been this, it might have been that.

10 Okay. That may go out.

11 BY MR. BEVAN:

12 Q. Is it your best recollection that you issued three checks?

13 A. Correct.

14 Q. Did you have a discussion with Mr. Rosenthal about the  
15 timing of when he was to cash those checks?

16 A. Yes, I did.

17 Q. What was the discussion you had with Mr. Rosenthal?

18 A. He was just to make sure he had gotten his money. He was  
19 going to take the checks, cash one on Friday that I issued on  
20 February 1st. He was going to cash one that Friday and one the  
21 following Friday.

22 Q. So you had an understanding as to when he was going to cash

23 two of the checks, correct?

24 A. Correct.

25 Q. You indicated that there was a third check he wrote; is

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1 that correct?

2 A. Three total checks, correct.

3 Q. Did you have an understanding as to when he was going to

4 cash the third check?

5 A. The smallest check should have already been cashed, but he

6 had held it an extra amount of time for some reason and it

7 didn't clear either.

8 Q. Okay.

9 And were there other checks you had written that

10 essentially made it to the bank first and were -- and cleared?

11 MR. AMPAR&Aacute;N: Objection, lack of foundation,

12 speculation.

13 THE COURT: Overruled.

14 THE WITNESS: Correct. The landlord's rent check.

15 BY MR. BEVAN:

16 Q. Pardon me?

17 A. The landlord's rent check got in ahead of Mr. Rosenthal's

18 and made Mr. Rosenthal's check bounce.

19 Q. Okay.

20 And when you said the landlord's check, within

21 Exhibit 76A, in fact, there is a -- there is a check for \$4000

22 to Occidental Express and the memo says "February rent."

23 Seeing this check also dated 2/1/02, is that the

24 check you are referring to for rent?

25 A. Correct.

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1 Q. And so if Mr. Rosenthal had followed the sequence that you  
2 and he had talked about, would at least one or more of these  
3 checks you wrote to him have cleared the bank?

4 A. Oh, yes, sir.

5 MR. AMPAR&Aacute;N: Objection, speculation.

6 THE COURT: Overruled.

7 THE WITNESS: Yes, sir.

8 BY MR. BEVAN:

9 Q. Did you at the time you wrote these checks knowingly write  
10 these checks to, in a sense or in fact, defraud Mr. Rosenthal  
11 by not funding these checks so that when -- if they had been  
12 presented as you and he had talked about, would they have  
13 bounced anyway?

14 Do you understand my question?

15 A. You've got me.

16 THE COURT: The question is this: At the time that  
17 you wrote the checks, was it your understanding that if they  
18 were negotiated the way that you and Mr. Rosenthal had agreed,  
19 the checks would have been properly negotiated and would been  
20 paid?

21 THE WITNESS: Yes, sir.

22 THE COURT: That's the question.

23 BY MR. BEVAN:

24 Q. But, in fact, based on what you understand happened with  
25 respect to the bank account that you are the signatory on,

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1 the -- do you have an understanding as to whether or not  
2 Mr. Rosenthal followed the sequence of cashing checks that you  
3 and he had agreed upon?

4 A. I think he tried to put the first one in, but the landlord  
5 had said he would hold his till Monday, ran right to the bank  
6 and cashed his, which made Mr. Rosenthal's not cash.

7 Q. So would it be fair to say it could have been a combination  
8 of the landlord also cashing his check before you anticipated  
9 him cashing that check that it contributed to Mr. Rosenthal's  
10 checks bouncing?

11 MR. AMPAR&Aacute;N: I'm going to object --

12 THE WITNESS: Correct.

13 MR. AMPAR&Aacute;N: -- vague, compound and irrelevant.

14 THE COURT: Overruled.

15 THE WITNESS: The landlord agreed to hold on to the  
16 check until Monday, but then he went and cashed it on Friday  
17 for 4000.

18 BY MR. BEVAN:

19 Q. Now, did there come a time where Mr. Rosenthal sued you  
20 personally to recover what the balance of what he claimed was  
21 owed for plants?

22 A. Yes, sir.

23 MR. AMPAR&Aacute;N: Objection, objection. I'm just  
trying

24 to think of appropriate terminology. Assumes facts not in  
25 evidence.

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1 And I'm sorry. I'll withdraw. I'll get it out on  
2 cross.

3 BY MR. BEVAN:

4 Q. Showing you, Mr. Martin, Exhibit 83 for identification, is  
5 a this copy of -- it's entitled Plaintiff's Claim, Plaintiff,  
6 Ed Rosenthal, 1635 East 22nd Street, Oakland; Defendant, Bob

7 Martin, 122 10th Street, San Francisco, a claim for \$5000. And  
8 there is attached court documents.

9 Is that, sir, the action that was filed by  
10 Mr. Rosenthal in 2004 against you personally to collect what he  
11 claimed was owed for plants sold to the Harm Reduction Center?

12 MR. AMPAR&Aacute;N: Your Honor, I would object.  
Counsel

13 is misphrasing the action and the --

14 THE COURT: You can take care of it in the cross as  
15 you indicated.

16 Okay. Go ahead.

17 BY MR. BEVAN:

18 Q. Is that what that is?

19 A. That's what that is.

20 MR. BEVAN: I would offer in evidence Exhibit 83,  
21 Your Honor.

22 THE COURT: Okay. Admitted without objection.

23 BY MR. BEVAN:

24 Q. Now, the amount that is claimed here says it's 5000; is  
25 that correct?

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1 A. Correct.

2 Q. And in the statement under number 1, it says, "Defendant  
3 owes me the sum of \$5000, not including court costs, because he  
4 wrote bad checks and admitted in court that he knew they were  
5 bad and would bounce."

6 Did I read that correctly?

7 A. Yes.

8 Q. Now, the statement "admitted in court that he knew they  
9 were bad and would bounce," when you -- did you read that?

10 A. Oh, yes.

11 Q. And when you got it, was your state of mind at that time  
12 that that referenced your testimony in regard to this matter?

13 A. Could you repeat that, please.

14 Q. Was your state of mind when you read that that the  
15 reference to admitting in court was a reference to your  
16 testimony in connection with this matter?

17 MR. AMPAR&Aacute;N: Your Honor, I'm going to object as  
18 to  
19 the relevance of this witness' state of mind in reading an  
20 ancillary document.

21 THE WITNESS: I don't know what to say.

22 THE COURT: Go ahead.

23 BY MR. BEVAN:

24 Q. Now the \$5000 amount, you had already testified to today  
25 that this was reference to a \$7000 amount?

A. Correct.

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1 Q. And do you know based on discussions with Mr. Rosenthal why  
2 the amount that he sued you for was \$5000 instead of \$7000?

3 A. He had been paid 2000 of the 7-, and I think there is a  
4 limit in small claims court of around 4500 to 5000.

5 Q. And how was he paid the \$2000?

6 A. Through a friend of his. And she paid him and then she  
7 came and got the money from me.

8 Q. So you actually paid \$2000 -- was that in cash?

9 A. Correct.

10 Q. And when was that paid?

11 A. A few months after the first trial, but not to  
12 Mr. Rosenthal, to an associate.

13 Q. Okay.

14 And so the difference is what Mr. Rosenthal was  
15 suing you for; is that correct?

16 A. Correct.

17 Q. And that --

18 A. Or it was because that was the limit that he could go in  
19 small claims.

20 Q. Okay.

21 And is it correct that that matter went to trial?

22 A. Oh, yes.

23 Q. And that you lost in small claims?

24 A. In the first round we only had three minutes and no  
25 attorney. And the judge erred and ruled in his favor.

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1 MR. AMPAR&Aacute;N: Your Honor, I'm going to object.

2 THE COURT: Sustained.

3 BY MR. BEVAN:

4 Q. Just answer yes or no.

5 THE COURT: No, I think actually whatever happened  
6 in small claims court, I don't know that that is admissible.  
7 So I'm sustaining the objection to the outcome.

8 BY MR. BEVAN:

9 Q. And --

10 THE COURT: Let's move on.

11 BY MR. BEVAN:

12 Q. Now, did there come a point where you ended up with some  
13 plants in your possession from the Harm Reduction Center?

14 A. Yes, sir.

15 Q. And were these plants, as far as you were concerned or your

16 knowledge, plants that were the subject of the letter of  
17 Mr. Watts about infected plants or diseased plants?  
18 A. Correct.  
19 Q. And how is it that you ended up with -- these are plants  
20 that had, according to Mr. Watts' letter, had come from  
21 Mr. Rosenthal; is that correct?  
22 A. Correct.  
23 Q. And how is it that you ended up with these plants?  
24 A. As soon as they were delivered, the employees inspected  
25 them with magnifying glasses and discovered the pests on the

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1 plants. And immediately put them in plastic bags and got them  
2 out of the building and stuck them in the trunk of my car.

3 Q. Okay.

4 So you said someone actually looked at them and did  
5 they see --

6 MR. AMPAR&Aacute;N: Objection. Actually, Your Honor,  
I'm  
7 going to object. Move to strike, lacks foundation, multiple  
8 levels of hearsay.

9 THE COURT: Sustained.

10 BY MR. BEVAN:

11 Q. Based on what you were advised about these plants, did you  
12 take any action?

13 A. Yes. The other people that had put them in bags and had  
14 them tied up where nothing could escape and then --

15 MR. AMPAR&Aacute;N: Your Honor, objection.

16 THE WITNESS: -- put them in the space in my trunk.

17 THE COURT: I think he can testify as to what he  
18 did.

19 MR. AMPAR&Aacute;N: He is testifying to what other  
people

20 did.

21 THE COURT: Well, he is saying that somebody put  
22 them in plastic bags, that is what he's saying.

23 MR. BEVAN: I'm offering it for a non-hearsay  
24 purpose, Your Honor.

25 THE COURT: They go to his state of mind to explain

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1 what he did with these items.

2 MR. BEVAN: Yes.

3 THE COURT: Okay. Explain what you did with the  
4 items.

5 BY MR. BEVAN:

6 Q. What did you do with these plants?

7 A. Either myself or a friend put them in the trunk of my car  
8 or both.

9 MR. AMPAR&Aacute;N: I'm going to object.

10 Lacks foundation and speculation.

11 THE COURT: Okay.

12 Sustained.

13 BY MR. BEVAN:

14 Q. Did you take custody of the plants? Did you have the  
15 plants in your possession?

16 A. Yes, sir.

17 Q. And, ultimately, what did you do with the plants?

18 A. I left them in the trunk of my car and then I needed the  
19 space one day, so I pulled the two boxes out. After I had  
20 forgotten they were there and put them in my storage room, and  
21 I just assumed that since they were tied up in bags that they

22 would die and disappear.

23 Q. Were they disposed of somehow?

24 A. Yes, sir.

25 Q. And how were they disposed of?

1131

Martin - Direct / Bevan

1 A. After I remembered two weeks later that they were there, I  
2 had someone go to my garage and take them and told them to  
3 throw them away.

4 Q. Were these the plants -- do you know if these were the  
5 plants that Mr. Rosenthal personally delivered?

6 A. Yes, sir.

7 Q. Now, did you ever have a discussion with Mr. Rosenthal  
8 during the period of time that you were associated with the  
9 Harm Reduction Center where he offered you a proprietary  
10 interest in the club or that that was discussed?

11 A. Yes, sir.

12 Q. And when did that conversation take place?

13 A. That would have been in January of '02.

14 Q. And what was -- what was said by him and by you during this  
15 conversation?

16 A. He just asked me to team up with him and not associate with  
17 Rick Watts and join him.

18 Q. And join him?

19 Did he offer you a certain percentage of interest in  
20 the Harm Reduction Center?

21 A. A percentage in his particular thing. It wouldn't have  
22 been Harm Reduction Center, his particular industry or  
23 business.

24 Q. So was the context that the -- this would be a -- a venture  
25 that he would be involved in?

Martin - Direct / Bevan

1 A. Correct.

2 Q. And he was offering you a percentage ownership or  
3 proprietary interest in that venture; is that correct?

4 A. Correct.

5 Q. And the context was Mr. Watts would be out; is that  
6 correct?

7 A. Correct.

8 Q. During the time that you were involved in the Harm  
9 Reduction Center, you have already testified that Ken Hayes was  
10 in Canada to your understanding; is that correct?

11 A. Correct.

12 Q. While you were involved, did Mr. Hayes ever come back to  
13 the Harm Reduction Center?

14 A. Not to my knowledge.

15 Q. Do you know Ken Hayes?

16 A. Yes, sir.

17 Q. Showing you, sir, Exhibit 95 and Exhibit 96, first of all,  
18 Exhibit 95; do you recognize anyone in that picture?

19 A. Rick Watts.

20 Q. Rick Watts is in that picture?

21 A. Yes.

22 Q. And what color shirt is he wearing?

23 A. Blue.

24 Q. Blue?

25 Showing you picture 96, do you recognize either of

Martin - Direct / Bevan

1 the two individuals in that picture?

2 A. The one on the left in the white T-shirt is Ken Hayes.

3 Q. Do you know the person -- the other person?

4 A. No, sir.

5 Q. And --

6 MR. AMPAR&Aacute;N: Sorry, didn't hear the response.

7 THE COURT: He said no.

8 THE WITNESS: No, sir. I'm sorry.

9 MR. BEVAN: I would offer in evidence, Your Honor,  
10 Exhibits 95 and 96.

11 THE COURT: Admitted without objection.

12 (Plaintiff's Exhibits 95 and 96 were  
13 received in evidence.)

14 BY MR. BEVAN:

15 Q. Exhibit 95 is on the screen.

16 Is it correct, Mr. Martin, that you have identified  
17 the man wearing the blue shirt to be Rick Watts; is that  
18 correct?

19 A. Yes, sir.

20 Q. And Exhibit 96, you've identified the person in the white  
21 T-shirt as being Ken Hayes; is that correct?

22 A. Yes, sir.

23 Q. And earlier I showed you a photo, and you identified  
24 Exhibit 90 as a picture of the person you know as Brian, the  
25 driver's license, and on the screen is Exhibit 90, is that --

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Martin - Cross / Ampar&aacute;n

1 what I showed you by way of the DMV picture that you  
2 identified?

3 A. Yes, sir.

4 MR. BEVAN: That's all I have at this time, Your  
5 Honor.

6 THE COURT: Okay.

7 Cross?

8 Ladies and gentlemen, you want to stand up and just  
9 stretch a little bit? If you do, go ahead; if you don't, you  
10 don't have to.

11 THE WITNESS: I would like a glass of water, Your  
12 Honor.

13 THE COURT: Okay.

14 Barbara, would you get Mr. Martin a glass of water,  
15 please.

16 CROSS-EXAMINATION

17 BY MR. AMPAR&Aacute;N:

18 Q. Good morning, Mr. Martin.

19 A. Good morning, Mr. Ampar&aacute;n.

20 Q. We started our -- the Government started out your  
21 examination this morning by talking about your immunity.

22 A. Correct.

23 Q. And the fact that you are aware that what you say in court  
24 today and said in court on prior occasions cannot be used  
25 against you criminally in any manner?

1135

Martin - Cross / Ampar&aacute;n

1 A. Correct.

2 THE COURT: Well, that's not quite correct.

3 You understand, don't you, that you have an  
4 obligation to tell the truth?

5 THE WITNESS: Yes, sir.

6 THE COURT: And if you don't tell the truth, then  
7 that can form the basis of a prosecution?

8 THE WITNESS: Correct.

9 THE COURT: For perjury in your testimony today?

10 THE WITNESS: Correct.

11 THE COURT: So, in other words, that testimony can  
12 be used against you in a prosecution for perjury?

13 THE WITNESS: Oh, okay.

14 THE COURT: If, in fact, it concluded that you did  
15 not tell the truth; do you understand that?

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay.

18 Go ahead.

19 BY MR. AMPAR&Aacute;N:

20 Q. You said that for the initial four to five months you pled  
21 the Fifth, but since then you were granted immunity?

22 A. Right. I pled the Fifth through an attorney in your law  
23 office named Nichole deFebruarier.

24 Q. The first four to five months of your representation,  
25 Mr. Martin, of your case you said that at some point you were

1136

Martin - Cross / Ampar&aacute;n

1 granted immunity, correct?

2 A. I was not granted immunity until the trial had already  
3 started.

4 Q. You were told you were going to be given immunity for your  
5 testimony, correct?

6 THE COURT: Can I see counsel over side bar for a  
7 moment, please.

8 (Side bar held.)

9 THE COURT: Well, of course, I'm troubled by the  
10 facts, he says that he was represented by an attorney in your  
11 office. I think that because you can't cross-examine somebody  
12 if that were the case. But I think it's an independent office,

13 isn't it?

14 MS. GREENBERGER: Right.

15 THE COURT: I'll clarify that so it doesn't appear  
16 that you're doing anything with these people.

17 (Side bar concludes.)

18 THE COURT: Just for clarification, the witness said  
19 that he was represented by Counsel's office; in fact, it was  
20 not an associate or a partner of Counsel or any of the counsel,  
21 is that correct, who is representing Mr. Rosenthal?

22 Though there may be some connection, it had no  
23 connection -- the connection may be sharing office space or  
24 something of that nature as distinct from any formal or even  
25 informal association.

1137

Martin - Cross / Ampar&aacute;n

1 So I want you to understand that.

2 Is that correct? Do you remember the name of the  
3 lawyer?

4 THE WITNESS: Yeah, Nichole deFebruarier. And they  
5 do call themselves sole practitioners.

6 THE COURT: Okay. So it's a collection of sole  
7 practitioners.

8 Go ahead, Mr. Ampar&aacute;n.

9 BY MR. AMPAR&Aacute;N:

10 Q. So when you said that you -- well, let me ask you this:  
11 The grant of immunity that you had been operating under has  
12 been official and a court thing that you were involved in since  
13 at least 2001, correct? I'm sorry, 2003.

14 A. The raid was in 2002. The immunity was in 2003. The  
15 immunity only covered me on the stand. I was told that after I  
16 left the stand and I did anything illegal, I would be arrested

17 or could be arrested.

18 Q. Okay.

19 When you left the stand in 2003, you left the stand  
20 and you went back to a dispensary where you have continued to  
21 be in operation selling marijuana in contrary against federal  
22 law?

23 MR. BEVAN: Irrelevant.

24 THE COURT: I'll allow it.

25 THE WITNESS: We did -- I did go back and continue

1138

Martin - Cross / Ampar&aacute;n

1 and operated a medical marijuana clinic until just recently  
2 when the two clinics were shut down based on harassment from  
3 your law firm.

4 BY MR. AMPAR&Aacute;N:

5 Q. You believe my law firm to be harassing you, Mr. Martin?

6 A. Well, when your law firm turned us in to the federal  
7 government for tax problems, and that is pretty much putting a  
8 lot of heat on a marijuana clinic and two clinics closed down  
9 because of it.

10 Q. You believe my law firm has closed you down, Mr. Martin?

11 A. I believe the three attorneys involved in the case and  
12 Mr. Rosenthal have.

13 Q. So the four of us have the power of the federal government  
14 to come in and shut you down? Is that your testimony?

15 MR. BEVAN: Argumentative.

16 THE WITNESS: I'm just saying that you have caused  
17 so much harassment that we just couldn't take it nowhere.

18 BY MR. AMPAR&Aacute;N:

19 Q. Are you suffering harassment because you are considered to

20 be a snitch in the medical marijuana community? Is that why  
21 you are pissed off or angry?

22 MR. BEVAN: Your Honor, that is inappropriate  
23 language.

24 MR. AMPAR&Aacute;N: I'm sorry about the "pissed off."  
It  
25 came out unexpectedly.

1139

Martin - Cross / Ampar&aacute;n

1 THE WITNESS: Could you repeat the question?

2 BY MR. AMPAR&Aacute;N:

3 Q. Sure.

4 You are angry because you feel like you are  
5 considered a snitch within the medical marijuana community  
6 because of your continued participation with Mr. Bevan against  
7 Mr. Rosenthal, correct?

8 THE COURT: Well --

9 MR. BEVAN: It's argumentative.

10 THE COURT: Well, it's argumentative. If you want  
11 to ask it a different way, you may ask it a different way.

12 BY MR. AMPAR&Aacute;N:

13 Q. After leaving the stand giving previous testimony, you went  
14 back -- leaving the stand in 2003, you went back to work  
15 selling marijuana, correct?

16 A. Operating a clinic, not personally selling it myself.

17 Q. Operating a clinic or a dispensary?

18 A. Dispensary.

19 Q. And, in fact, you grew -- after your last testimony, you,  
20 in fact, grew from one dispensary to two dispensaries; isn't  
21 that correct?

22 A. I testified in court at the first trial that I was going to

23 open a second one.

24 Q. And you, in fact, did open a second one?

25 A. I was under oath and I testified I would and I did.

1140

Martin - Cross / Ampar&aacute;n

1 Q. And you did, and you were never busted, were you?

2 A. Never.

3 Q. Despite the fact that your conduct was contrary to federal  
4 law, and it had nothing to do with what you did on the stand,  
5 you were never arrested, were you?

6 A. I was never arrested or any of the other 30 marijuana clubs  
7 were never --

8 Q. And you --

9 THE COURT: Let him finish the answer.

10 BY MR. AMPAR&Aacute;N:

11 Q. And you were never shut down?

12 MR. BEVAN: Irrelevant.

13 THE WITNESS: Never shut down. There is 30 clubs  
14 operating right now.

15 BY MR. AMPAR&Aacute;N:

16 Q. Do you recall -- well -- do you recall testifying  
17 January 23rd, 2003, coming to this courtroom, being sworn to  
18 tell the truth, the whole truth and nothing but the truth,  
19 sitting down and giving testimony, do you recall that?

20 A. January -- okay. You are talking about a year after the  
21 raid and then the trial. Yes, sir, I remember.

22 Q. And at that trial did you -- sorry.

23 Did you previously testify --

24 THE COURT: Well, I think I -- if you are offering  
25 this by way of impeachment, I need to see it first before you

1141

1 ask the question.

2 Tell the Government.

3 MR. AMPAR&acute;N: Page 880 of the transcript.

4 THE COURT: What question do you want to ask and  
5 what answer?

6 MR. AMPAR&acute;N: The question --

7 THE COURT: What number?

8 MR. AMPAR&acute;N: Oh --

9 THE COURT: I want to look at it to tell me what it  
10 is.

11 MR. AMPAR&acute;N: I believe.

12 THE COURT: I need to have a specific.

13 MR. AMPAR&acute;N: Page 880, line 1.

14 THE COURT: 880, line 1 through what?

15 MR. AMPAR&acute;N: Through 880 -- I'm sorry, withdraw  
16 that.

17 THE COURT: Okay.

18 BY MR. AMPAR&acute;N:

19 Q. When did you first start working at the Harm Reduction  
20 Center?

21 A. First, I wouldn't call it working there. I was kind of  
22 hanging out, helping out. I would say, December '01.

23 Q. December '01.

24 And is it fair to say that is about the time that --  
25 is it fair to say that Mr. Hayes was in Canada at that time?

1142

1 A. He had just left. He was there in November and then I  
2 noticed in December or January he wasn't there.

3 Q. January he wasn't there?

4 A. I was gone for maybe two weeks and came back and he wasn't  
5 there.

6 Q. Okay.

7 And you were aware that Mr. Hayes was in Canada  
8 because he was fleeing from the DEA and the federal government  
9 in relation to his operation of the Harm Reduction Center?

10 A. Someone had mentioned to me that someone had turned him in  
11 and that he thought he might get arrested and that that is why  
12 he left Canada -- or that is why he left to go to Canada.

13 Q. Okay.

14 And Mr. Hayes' concern about his exposure to the  
15 federal authorities didn't raise that same level of concern for  
16 you when you stepped into the role of taking over the Harm  
17 Reduction Center?

18 A. He didn't. And I sure wish he hadn't.

19 Q. So Mr. Hayes flees to Canada, and you step into the Harm  
20 Reduction Center to fill the void?

21 A. I was asked -- Mr. Watts asked me to help him out and keep  
22 the bills paid and keep the electricity turned for him and  
23 stuff.

24 Q. So Mr. Watts made that request of you, not Mr. Hayes?

25 A. Right.

1143

Martin - Cross / Ampar&aacute;n

1 Q. And at the time the Harm Reduction Center was an entity, a  
2 corporation that was owned by Ken Hayes, correct?

3 A. LLC is the way it said on the check, I think.

4 Q. Okay.

5 But that was Ken Hayes' corporation, not Rick  
6 Watts', correct?

7 A. Right.

8 Q. When Mr. Hayes left for Canada, he did not appoint a  
9 successor, correct?

10 A. As far as I know he didn't.

11 Q. At the time you opened up an additional bank account for  
12 the Harm Reduction Center with Mr. Watts, Mr. Watts was not the  
13 owner of the Harm Reduction Center, correct?

14 A. Correct. He was a co-signer on the account which allowed  
15 him to add another account on the same account.

16 Q. So his total responsibility was the co-signer of the  
17 account?

18 A. I don't know about his responsibilities, but I know he was  
19 a co-signer on the checking account. And I'm kind of puzzled  
20 as to why he had me put on there.

21 Q. And having -- and being a co-signer on the account, Rick  
22 Watts was allowed to add an additional account and make you a  
23 co-signer?

24 THE COURT: An additional account or signature?

25 MR. AMPAR&Aacute;N: Additional account.

1144

Martin - Cross / Ampar&aacute;n

1 THE COURT: Okay.

2 THE WITNESS: That is the way it works because it  
3 ended up where the account was not separated from the first  
4 one, and Mr. Hayes still had the ability to withdraw the funds  
5 from the new account. The banker put them all into one on the  
6 Internet.

7 BY MR. AMPAR&Aacute;N:

8 Q. And in the end in this lawsuit, the small claims action  
9 that was talked about, you didn't have to pay because -- you  
10 weren't personally liable because --

11 THE COURT: Well, Counsel, you objected to the  
12 outcome of the litigation.

13 MR. AMPAR&Aacute;N: Oh, I'm sorry.

14 THE COURT: I'm just saying you objected to it, so I  
15 left it out.

16 MR. AMPAR&Aacute;N: Okay. I'll go on.

17 THE COURT: It's not for you to ask again.

18 BY MR. AMPAR&Aacute;N:

19 Q. I'm going to approach and show you what has been marked as  
20 Exhibit 76C and ask you, Mr. Martin, are those the two checks  
21 or two of the three checks you've testified that were written  
22 to Mr. Rosenthal?

23 A. Yes, sir.

24 Q. And the checks were not -- were returned because of  
25 nonsufficient funds within the account, correct?

1145

Martin - Cross / Ampar&aacute;n

1 A. I'm not sure which ones were returned before the account  
2 was seized on the 12th. So there was not really enough time  
3 for them to go through. So I never knew which checks went  
4 through. And I see this one did not go through, insufficient  
5 funds. And on the \$3000 one, let's see, if anybody can --

6 MR. BEVAN: I can't hear what the witness is saying.

7 THE WITNESS: Both checks were returned for  
8 insufficient funds.

9 BY MR. AMPAR&Aacute;N:

10 Q. And it's your testimony that the -- that you drafted  
11 several checks on the -- on a new Harm Reduction Center LLC  
12 bank account and had an agreement with Mr. Rosenthal and your  
13 landlord that nobody was going to cash the checks right away?

14 A. The landlord was going to wait three days, Mr. Rosenthal  
15 was going to cash one per week.

16 Q. Okay.

17 A. Because --

18 Q. And your understanding, then was that if you wrote the  
19 checks -- the checks are dated February 1st, correct?

20 A. Correct.

21 Q. You actually recall when the checks were written?

22 A. I would say February 1st.

23 Q. You wouldn't have predated them or postdated them in any  
24 way?

25 A. I postdated them, the account was only open five or six

1146

Martin - Cross / Ampar&aacute;n

1 days and no more than 10 days or 12 days before this.

2 Q. But it was your understanding that this was going to be  
3 a -- and at this point you are a signator on the checking  
4 account?

5 A. Right.

6 Q. Taking over an administrative role or an ownership  
7 interest? Have you?

8 A. Oh, no.

9 Q. You haven't taken over an ownership interest?

10 A. No.

11 Q. Administrative?

12 A. Just trying to clear Mr. Hayes' debt.

13 Q. You are there, you are signing, putting yourself out to be  
14 a representative of the Harm Reduction Center?

15 A. I guess you could say that.

16 Q. And it's your testimony that the -- you bounced your checks  
17 because people didn't agree to wait and deposit them like they

18 told you they were going to wait?

19 A. The landlord took his on Friday and said he would cash it  
20 on Monday, but he went straight to the bank, I would say,  
21 within the hour.

22 Q. And it's your testimony that Mr. Rosenthal was going to  
23 wait a week, deposit one, and wait a week and deposit one?

24 A. Right, because the bank account had money coming in every  
25 day from the credit card account.

1147

Martin - Cross / Ampar&aacute;n

1 Q. Okay.

2 Isn't it true that you couldn't postdate a check?

3 A. Is it true that you can't?

4 Q. You can.

5 A. You can?

6 Q. If you -- say, for example, you are writing a check on  
7 February 1st, 2002, and you want Mr. Rosenthal to wait a week  
8 before depositing check number 2, you very easily could have  
9 dated the check February 8th, 2002, couldn't you have?

10 A. I'm not sure if that is legal or not to postdate a check.

11 Q. Isn't it true --

12 A. I think somebody --

13 Q. -- you didn't manage the money in the account?

14 A. Pardon?

15 Q. Isn't it true you didn't manage the money in the account?

16 A. Didn't manage it?

17 Q. Yeah.

18 Isn't it true you just cut checks that you didn't  
19 have money for?

20 A. This man was begging for his money and he knew that if he

21 took the checks at least he had something. He had something.  
22 Q. So you cut checks knowing money wasn't in the bank account?  
23 A. And discussed that with Mr. Rosenthal before we did that.  
24 And the credit card company deposits money in the bank account  
25 every day, which would have made the checks good. But if he

1148

Martin - Cross / Ampar&aacute;n

1 hadn't gotten the checks, he had no chance at all of getting  
2 his money.

3 Q. Now --

4 A. He was very happy to have them.

5 Q. Isn't it fair to say that you and Mr. Watts basically just  
6 took over the club in the absence of Ken Hayes?

7 A. I wouldn't call it taking over. I would just say we were  
8 trying to keep it operating and keep the utilities going. And  
9 the utilities did get turned off.

10 MR. AMPAR&Aacute;N: Is the letter up there?

11 MR. BEVAN: (Pointing.)

12 BY MR. AMPAR&Aacute;N:

13 Q. Showing you what has been marked as Exhibit 75B, could you  
14 tell -- this is the letter that you read to the jury?

15 A. Yes.

16 Q. And --

17 A. Yes, sir.

18 Q. Did you talk to Mr. Watts and tell him to write that  
19 letter?

20 A. No, sir.

21 Q. Did you discuss with Mr. Watts the content of that letter  
22 or -- did you discuss Mr. Watts -- did you discuss with  
23 Mr. Watts what you -- let me ask you this: Did you agree with  
24 Mr. Watts' position in that letter?

25 A. I told him that I would not send this to Mr. Rosenthal.

1149

Martin - Cross / Ampar&acute;n

1 Q. Did you believe there to be a purposeful effort to infest  
2 the Harm Reduction Center with pests or aphids or mold of some  
3 kind?

4 A. At that time I testified I didn't really have enough  
5 knowledge to know if he actually attempted that.

6 Q. At which time? I'm talking about at the time that this  
7 letter was drafted, not in the testimony time.

8 A. This is something Mr. Watts had written that I had no, you  
9 know, actual knowledge of. And this was before I was there.  
10 And I think he just did it after the last batch came in, the  
11 last set, that is dated February 1st. But it's referring to  
12 stuff months before.

13 Q. Isn't it true, Mr. Martin, that you saw the value of the  
14 Harm Reduction Center and wanted it for yourself?

15 A. Absolutely not.

16 Q. Isn't it true that you saw there to be a physical  
17 establishment all set up?

18 A. Um --

19 Q. With an active list of clients and an active list of  
20 vendors?

21 A. I was afraid to enter that building. It was in such a  
22 dangerous location in the city.

23 Q. So it was just the particular physical location, it wasn't  
24 the conduct that was an issue?

25 A. I don't understand your question.

1150

Martin - Cross / Ampar&acute;n

1 Q. Well, you are saying you didn't want to be there because

2 you were afraid of 52 6th Street. That is fine. My question  
3 is: Absent the physical location are you -- were you afraid of  
4 being involved in dispensing marijuana?  
5 A. No, sir.  
6 Q. Because you, in fact, continued to do so?  
7 A. Correct.  
8 Q. Now, you testified as to one of the two checks -- or as to  
9 a check that had the word "consulting" on it.  
10 A. Correct.  
11 Q. And you testified that you felt bad or felt like it's  
12 dishonest?  
13 A. Right. Because if something is legal, there is no reason  
14 to try to hide anything.  
15 Q. It's your handwriting, correct?  
16 A. Correct.  
17 Q. Mr. Rosenthal has no power and control over you, does he?  
18 A. No, sir.  
19 Q. You wrote that word on your own free will? Nobody put a  
20 gun or weapon to your head?  
21 A. Oh, no, he just asked me to and I obliged.  
22 Q. And you did it?  
23 A. Right.  
24 Q. Isn't it true that you did it because that is what it was  
25 for, consulting work?

1151

Martin - Cross / Ampar&aacute;n

1 A. I know of no consulting work whatsoever.  
2 Q. In addition to the Harm Reduction Center, had you opened --  
3 isn't it true that you had already opened up another dispensary  
4 on 10th Street by February 1st, 2002?

5 MR. BEVAN: Irrelevant.

6 THE COURT: I'm going to permit it.

7 THE WITNESS: I left the 6th Street dispensary  
8 before the raid happened two days before on Sunday, and then  
9 on -- but on February 1st, I had rented another building on  
10 10th Street and agreed to leave 6th Street and told  
11 Mr. Rosenthal that he could have it. I was no longer  
12 interested.

13 BY MR. AMPAR&Aacute;N:

14 Q. So the short answer would be, yes, by February 1st, 2002  
15 you had already opened up another dispensary?

16 A. I had rented a building to open up as a dispensary. I was  
17 tired of fighting over one in a ghetto.

18 Q. There is no question pending.

19 Now, you testified that at some point you had a  
20 conversation with Mr. Rosenthal about going into business with  
21 him but kicking out Rick Watts?

22 A. Correct.

23 Q. Wasn't that really a discussion you had with Mr. Rosenthal  
24 because Mr. Watts had been found selling product from the Harm  
25 Reduction Center out of his garage or out of his home?

1152

Martin - Cross / Ampar&aacute;n

1 A. I have no knowledge of what you are talking about. That  
2 was after the fact, I think.

3 Q. And in addition to being under a grant of immunity, you are  
4 here under a federal subpoena, correct?

5 A. Correct.

6 Q. And you have met and spoken with Mr. Bevan numerous times  
7 over the last five years, four months, correct?

8 A. I would say two, three, four times, maybe.

9 Q. You have also had meetings with DEA agents.

10 A. In the same meeting with Mr. Bevans (sic).

11 MR. AMPAR&Aacute;N: Sorry, Your Honor, too many papers.

12 BY MR. AMPAR&Aacute;N:

13 Q. Now, your testimony was -- I'm going to ask you about  
14 these -- I believe you said there were two trays of clones that  
15 had some either pests or mold or some problem with the roots?

16 A. Root aphids.

17 Q. Are those a bug or a fungus?

18 A. I think it's a bug. I'm not really familiar with these  
19 things.

20 Q. Well, let me ask you this: Have you ever published any --  
21 any books on -- on marijuana or dispensaries?

22 A. No, sir.

23 Q. Do you have any business training or education, like an  
24 MBA?

25 A. No, sir.

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Martin - Cross / Ampar&aacute;n

1 Q. Prior to taking over a club and starting two of your own,  
2 did you participate in any marijuana working groups or  
3 advocacy?

4 MR. BEVAN: Irrelevant.

5 THE COURT: I'll allow it.

6 THE WITNESS: Could you repeat the question and  
7 clarify it?

8 BY MR. AMPAR&Aacute;N:

9 Q. Did you participate in any political activities related to  
10 the dispensary?

11 A. Not that I know of.

12 Q. I'm going to ask you about a marijuana grow on -- are you  
13 familiar with the address at 1919 Dennis Lane?

14 A. Yes, sir.

15 MR. BEVAN: Irrelevant, Your Honor.

16 THE COURT: Well, I don't know.

17 BY MR. AMPAR&Aacute;N:

18 Q. Did you maintain a marijuana grow at that address?

19 A. Yes, sir.

20 Q. And that marijuana grow was raided and seized first by  
21 Sonoma County sheriffs and then taken over by the DEA, correct?

22 A. I say just by the DEA.

23 Q. To your knowledge, it was just DEA?

24 A. Right.

25 Q. And you were -- and you were never arrested or charged for

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Martin - Cross / Ampar&aacute;n

1 that, were you?

2 A. No, sir.

3 Q. And that -- that would have occurred on May 20th, 2004, the  
4 raid on your grow?

5 A. That's incorrect.

6 Q. Do you know what date the raid on your grow was?

7 A. I would say around August 12th, approximately. I rented  
8 the place on May 1st, only had it a few weeks and then bam.

9 Q. Would looking at a copy of the sheriff's department report  
10 refresh your recollection of the date which they raided?

11 THE COURT: 2004; is that right?

12 THE WITNESS: A neighbor saw someone stealing  
13 something and called the sheriff's department and the sheriff's  
14 department came out.

15 BY MR. AMPAR&Aacute;N:

16 Q. And your grow was raided?

17 A. Well, it wasn't actually raided. They said if I didn't  
18 produce a -- if I didn't drive up there and show them a medical  
19 marijuana recommendation, they were going to take the couple of  
20 little plants that had just been left there 30 minutes ago.

21 Q. Just been left there 30 minutes ago?

22 A. I asked them how did you get there so fast. You know? But  
23 the neighbor had called the police when someone was stealing  
24 something and climbing across the fence, so the five sheriff's  
25 cars pulled up.

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Martin - Cross / Ampar&aacute;n

1 Q. And that investigation was turned over to the DEA, correct?

2 A. I don't think so. I think the landlord later turned us  
3 over to the DEA.

4 Q. Did you have a conversation with Mr. Bevan about that raid  
5 on your grow?

6 A. When?

7 Q. After the raid on your grow.

8 A. No, sir. Just we discussed it in the last couple of weeks,  
9 I think since he's been aware of it.

10 Q. Did he tell you to stop selling from the dispensary?

11 A. No, sir.

12 Q. Did he tell you to stop growing for the dispensary?

13 A. I wasn't growing at the time of the conversations.

14 Q. I want to -- the -- and the Sonoma raid in May of 2004, is  
15 it fair to say that that involved 350 plants?

16 A. One of the deputies took whatever was there, a little  
17 something, I would say that sounds about the right figure.

18 Q. Okay.

19 A. 3-, 350.

20 Q. And then there was a raid on another grow of yours in  
21 August 2004 where 3000 plants were seized, correct?

22 A. Incorrect. I think that must be Mr. Rosenthal's grow.

23 Q. I'm talking about yours.

24 You don't remember?

25 A. You have made a mistake on your counts.

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Martin - Cross / Ampar&acute;n

1 Q. I'm sorry, I misspoke.

2 So there were two raids at the same property on  
3 Dennis Lane, correct, one in May and one in August?

4 A. I wouldn't call the first one a raid. I call it police  
5 coming to see who was stealing property from us.

6 Q. Okay.

7 And in the -- is it fair to say that in the  
8 August 3rd, 2004 DEA raid of 1919 Dennis Lane, that 1396  
9 marijuana plants were seized?

10 A. I'm still thinking that figure is high. I'm thinking it's  
11 more of a hundred less than that.

12 Q. So you think maybe a hundred less than 1400?

13 A. I'm saying, maybe I thought I had read something that said  
14 12-something, 1200 something.

15 Q. Would looking at a copy of the --

16 THE COURT: Well, I don't think there is a big  
17 difference between 1200 and 1400, so let's move ahead.

18 BY MR. AMPAR&acute;N:

19 Q. And for those 13- or 1400 marijuana plants that were seized  
20 by the DEA, were you prosecuted for those plants, Mr. Martin?

21 A. No, sir.

22 Q. You said you had a meeting with Mr. Rosenthal that included

23 Father Nazarene, Robert McCormick and two people you saw at  
24 1419 Mandela Parkway?

25 A. Correct.

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Martin - Cross / Ampar&aacute;n

1 Q. And it's your testimony that Mr. Rosenthal convened this  
2 meeting with all these other people so that he could decide  
3 whether or not he wanted to get a bigger space?

4 A. He asked them to come over so he could show them the space,  
5 so I rode along with the two people he was showing the space  
6 to.

7 Q. You don't have any notes from that meeting?

8 A. It wasn't what you call a meeting. It was just somebody  
9 saying that this man wants me to look at this building to loan  
10 him some money so he can rent it.

11 Q. I believe you testified that you saw Mr. Rosenthal on one  
12 occasion bring in a box of clones to the Harm Reduction Center?

13 A. Correct.

14 Q. How often -- how many times did you see Mr. Rosenthal at  
15 the Harm Reduction Center? Just that one time?

16 A. Just maybe when he came a few times without plants, maybe I  
17 talked to him. I know he was in there that time, and then I  
18 met him across the street at a restaurant, so I don't know if  
19 he actually came into the building. So I can say I only have a  
20 few -- I only talked to him possibly once. We met across the  
21 street. I don't know how many times I actually met him inside  
22 the clinic.

23 Q. Your recollection as you sit here today is that you have a  
24 recollection of him being inside the club speaking with you  
25 once?

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Martin - Cross / Ampar&acute;n

1 A. Right.

2 Q. But other meetings, other times, ones we have known about  
3 you have testified Mandela Parkway, but there may be some place  
4 across the street from the Harm Reduction Center?

5 A. Restaurant or something like that.

6 Q. But --

7 A. One time was when he picked up the checks that I actually  
8 saw him in the clinic, I do believe.

9 Q. That's when he picked up the checks?

10 A. Right.

11 Q. How long was he there when he picked up the checks?

12 A. I would say less than 30, 45 minutes.

13 Q. Was Mr. Rosenthal an authorized signator on any of the Harm  
14 Reduction Center checks or checking accounts?

15 A. I wouldn't think so, no.

16 Q. Did you ever see his name on any check?

17 THE COURT: You mean as signatory?

18 MR. AMPAR&acute;N: Yeah.

19 THE WITNESS: You mean as him signing a check?

20 BY MR. AMPAR&acute;N:

21 Q. Yeah.

22 A. Oh, no.

23 Q. He wasn't allowed to do that?

24 A. I have no idea of those situations.

25 Q. You never saw a check with his signature on it, correct?

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Martin - Cross / Ampar&acute;n

1 A. No, I don't think.

2 Q. Never saw any records from this bank to Harm Reduction

3 Center that had Mr. Rosenthal's name on it, correct?

4 A. Just the checks that I have a written to him, that's all.

5 Q. Father Nazarene, was he on the account?

6 A. No, I do not think so.

7 Q. Robert McCormick was he on the account?

8 A. No, sir, not that I know of.

9 Q. In terms of this bag of stuff that you said was removed  
10 from the Harm Reduction Center and placed in your -- placed in  
11 the trunk of your car, do you have an independent recollection  
12 as to whether you did that or someone did it, some other person  
13 did it?

14 A. It was two boxes so it was more than one person could  
15 carry. So either me and one other person put it in the car or  
16 another person took them out and put it in my car if I gave  
17 them the keys. It's five years. I forget who put it in the  
18 trunk.

19 Q. You just don't remember?

20 A. I don't know if -- who put them in the trunk or -- I think  
21 one buddy went and put both in or we both walked one box each,  
22 that was five years ago.

23 Q. Fair to say you don't remember?

24 A. I don't remember exactly who put it in my trunk.

25 Q. And you don't remember how long they were there?

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Martin - Cross / Ampar&aacute;n

1 A. I would say they were there less than a few days -- or less  
2 than two weeks.

3 Q. And you said that you left them in your trunk and you were  
4 hoping they were just going to die and disappear?

5 A. I moved them out of the trunk because I needed to put  
6 something else in the trunk, so I just stuck them in my little

7 storage room, and they were still in a bag so I just assumed  
8 they would die.

9 At that time there had been no raid. There was  
10 nothing for anybody to be fearful of, so there's nothing to be  
11 worried about. So I basically left them in the garage or a  
12 little storage room and forgot about them.

13 And then after the raid, I realized, oh, there is  
14 something in my storage room.

15 Q. Isn't it fair to say that the clones came in, the clones  
16 were fine and you just sold them and didn't pay for them?

17 A. No, that's an absolute lie.

18 Q. Did -- the federal government asked you whether or not Ken  
19 Hayes ever came back and you said no. Have you had contact  
20 with Mr. Hayes in Canada since 2002?

21 A. I think maybe a couple of phone calls to him before the  
22 trial. Or we had made a couple of phone calls before the  
23 trial.

24 Q. In the last week?

25 A. From the raid to the trial was a year, so I think I made

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Martin - Cross / Ampar&aacute;n

1 maybe three, four, five, six phone calls to Mr. Hayes in the  
2 meantime.

3 Q. In between --

4 A. Told him that I had been subpoenaed because he was thinking  
5 I was a DEA agent or something. So I called him and let him  
6 know that -- to let him know that I had been subpoenaed.

7 Q. Are you talking about 2003 or are you talking about last  
8 week or two weeks ago before the trial?

9 A. I'm talking about the time in between the 2002 raid and the

10 2003 trial.

11 Q. And you had five or six -- or five or six conversations  
12 with him?

13 A. I would say, five, six, seven. Could have been eight.  
14 Could have been as many as ten.

15 Q. And after your testimony in 2003, did you remain in contact  
16 with Mr. Hayes?

17 A. I don't think I've ever spoken to him again since then. I  
18 could be mistaken, but I don't think I've ever spoken to him  
19 again since then.

20 Q. Well, at a previous -- well, when you were driving around  
21 for a while with marijuana in the trunk of your car, were you  
22 ever arrested or prosecuted for that?

23 A. No, sir.

24 Q. When you said you kept plants in storage, were you arrested  
25 or prosecuted for that?

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Martin - Cross / Ampar&aacute;n

1 A. No, sir.

2 Q. Is it fair to say that you were the person who handled all  
3 the vendor bills at the Harm Reduction Center for the period of  
4 time you were there?

5 A. I was only there for a few weeks. So I was trying to pay  
6 the vendors that were owed money.

7 Q. And when you were there you were responsible for paying  
8 employees?

9 A. I think I -- I think Mr. Watts paid the employees.

10 Q. Were you responsible for paying yourself?

11 A. I didn't receive a salary.

12 Q. And in addition to the dispensaries we've already  
13 mentioned, you had an interest in a dispensary on Haight Street

14 in 2003, correct?

15 A. Let's see, it was 2002 and then by the time the trial  
16 happened last time, I had dissolved myself of that place and  
17 testified in court that I was no longer associated with it.

18 Q. Are you currently associated with Rick Watts?

19 A. He is a friend of mine.

20 Q. Are you associated with him in any of the dispensaries you  
21 are currently involved in?

22 A. Not with Mr. Watts.

23 Q. In 2003 -- well, let me ask you this: Yesterday, would be  
24 May 21st, 2007; did you call my law offices repeatedly and talk  
25 to my secretaries complaining about my office was shutting you

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Martin - Cross / Ampar&acute;n

1 down, threatening you, harassing you?

2 A. Never mentioned harassment. I made two phone calls to Pier  
3 5 law office.

4 Q. And did you additionally make harassing phone calls to --

5 THE COURT: Well, I don't think you can ask it that  
6 way.

7 BY MR. AMPAR&acute;N:

8 Q. Did you make calls to Green Aid, the Medical Marijuana  
9 Education and Legal Fund, leaving the same kind of messages?

10 MR. BEVAN: Assumes facts not in evidence as to what  
11 Green Aid is, Your Honor.

12 THE COURT: Did you call an entity called Green Aid?

13 BY MR. AMPAR&acute;N:

14 Q. Did you call an entity called Green Aid?

15 A. I called them and told them that two clinics had been shut  
16 down because of Mr. Rosenthal and his attorneys.

17 Q. So you think I shut you down?

18 THE COURT: That's already gone through.

19 THE WITNESS: I think that had a lot to do with it.

20 BY MR. AMPAR&Aacute;N:

21 Q. And that was an important thing for you to say and do,  
22 wasn't it, Mr. Martin?

23 A. Pardon?

24 Q. That was important for you to say and do, wasn't it?

25 A. Was what important?

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Martin - Cross / Ampar&aacute;n

1 Q. To say that you have been closed down.

2 A. I think it's important.

3 Q. In 2003, you were asked: "Mr. Martin, when you leave the  
4 stand you are going to walk back to your club and you are going  
5 to continue to sell marijuana?"

6 MR. BEVAN: May I have a page and line reference.

7 THE COURT: I would like to see it.

8 Why don't you go on to a different question and  
9 Ms. Greenberger can look at the transcript and see if she can  
10 locate it.

11 And, again, I'll just state the obvious thing that a  
12 question is not evidence, thank you.

13 Go ahead.

14 BY MR. AMPAR&Aacute;N:

15 Q. And you closed your clubs today, didn't you?

16 A. They were closed yesterday.

17 Q. You closed your clubs yesterday?

18 A. Correct.

19 Q. So that you wouldn't have to answer the question,

20 Mr. Martin, when you get done testifying today you are going to

21 leave the stand, go back to your club and continue to sell  
22 marijuana?  
23 A. Oh, that's still open for debate. I could still open them  
24 back up.  
25 Q. So the only person who closed your clubs is you and the --

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Martin - Cross / Ampar&acute;n

1 and you can open them right back up again, can't you?  
2 A. If I choose.  
3 Q. Now, Mr. Rosenthal isn't the only vendor that you have  
4 failed to pay; isn't that correct?  
5 A. I don't know of any.  
6 Q. Isn't it true that you use your connection with Mr. Bevan  
7 to shake-down people in the community and not pay because you  
8 know you can't be prosecuted?

9 MR. BEVAN: Your Honor, that is argumentative.

10 THE WITNESS: I think you are going to be arrested  
11 for what you just said.

12 THE COURT: Mr. Ampar&acute;n is not going to be  
arrested

13 for what he just said.

14 The question is highly improper, and Counsel knows  
15 it's improper and the jury --

16 THE WITNESS: Could you repeat it again, just so we  
17 can see how silly it sounds?

18 THE COURT: That's all right.

19 THE WITNESS: I would like to hear the question  
20 again, please.

21 MR. AMPAR&Aacute;N: We all want things we just can't  
have,

22 Mr. Martin.

23 THE COURT: Wait a minute, everybody. Okay.  
24 Do you have any further questions of this witness?  
25 MR. AMPAR&Aacute;N: May I have a moment.

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Martin - Cross / Ampar&aacute;n

1 THE WITNESS: I would like to know if there is  
2 somebody I haven't paid he is talking about.

3 THE COURT: Mr. Martin, wait until there is a  
4 question propounded.

5 BY MR. AMPAR&Aacute;N:

6 Q. Do you remember meeting DEA Agent Fay on January 9th, 2002?

7 A. No, sir.

8 Q. Do you recall selling or being involved in a sale of 405  
9 clones on January 9, 2002 to Agent Fay?

10 A. I was present at that time as it was happening. I was  
11 talking to the DEA informant while Mr. Fay was purchasing  
12 plants.

13 Q. Are you friends with the DEA informant?

14 A. He was somebody that I had known from Atlanta that we  
15 didn't know was a DEA informant and he turned DEA informant. I  
16 don't know when he turned informant. But, we knew he was the  
17 informant because of the amount of the 400 clones.

18 Q. Did you bring Rick Watts in to have meetings with  
19 Mr. Bevan?

20 A. I was subpoenaed to have a meeting or called to have a  
21 meeting with Mr. Bevan and they tried to schedule it where both  
22 of us would be there at the same time, just to kill two birds  
23 with one stone, I guess.

24 Q. Did you bring Mr. Watts in to meet with Mr. Bevan?

25 A. No, sir. I was at the courthouse at the same time

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1 Mr. Watts was there.

2 Q. Did you pay for Rick Watts' fines and fees?

3 A. I loaned Mr. Watts some money to pay his taxes, I think it  
4 was.

5 Q. Speaking of taxes, have you ever claimed --

6 MR. BEVAN: Objection, irrelevant.

7 THE COURT: I don't -- I would have an offer of  
8 proof as to taxes, all right, outside the presence of the jury.

9 Anything further?

10 MR. AMPAR&Aacute;N: Other than that issue.

11 THE COURT: Okay.

12 MR. BEVAN: No questions.

13 THE COURT: Okay. You are excused, Mr. Martin.

14 Just wait outside, if you would. Step down.

15 Ladies and gentlemen, we are going to take a recess  
16 now. We'll be in recess until 1:20.

17 I have some other matters that I have to deal with  
18 so you get a little bit longer for lunch.

19 Remember the admonition given to you; don't discuss  
20 the case with anyone, allow anyone to discuss it with you, form  
21 or express any opinion.

22 (Jury out at 12:10 p.m.)

23 THE COURT: Okay. Let the record reflect that the  
24 jurors have retired.

25 What is the issue on taxes that you want to go into?

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1 MR. AMPAR&Aacute;N: I want to inquire as to Mr. Martin  
2 whether or not he -- he filed his taxes and including the  
3 proceeds from his business activities.

4                   MR. BEVAN: And I object to that. It goes back to  
5 the discussion we had, Your Honor, where I objected to getting  
6 into the tax issue on the ground that -- on an even-playing  
7 field basically is what I referred to it.

8                   Since there was a motion to exclude reference of any  
9 tax situation involving the defendant, I felt that it was not  
10 appropriate for any of the marijuana witnesses to be questioned  
11 about their taxes. And I believe you suggested to the defense  
12 if they had an issue with that to file something and nothing  
13 was filed.

14                   So it's my view that it's irrelevant for the reasons  
15 I've indicated.

16                   THE COURT: Well, I think that it's of questionable  
17 value in -- it seems to be very cumulative to the whole theme  
18 that goes on here, which is that this witness is permitted to  
19 file a -- violate the law without consequences. That is the --  
20 that is the theme.

21                   The theme was developed so I think it's cumulative  
22 and its probative value is outweighed by the undue consumption  
23 of time and collateral to the issue as to the taxes. So I'm  
24 going to deny the motion to inquire into that.

25                   MR. AMPAR&Aacute;N: Something else was brought up  
related

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1 to the testimony of Mr. Watts, in addition to --

2                   THE COURT: Mr. Martin?

3                   MR. AMPAR&Aacute;N: Sorry, Mr. Martin. In addition to  
4 somehow believing that my office is responsible for closing  
5 down his clubs. I wanted to also ask him about disparaging  
6 remarks he made to Ms. Greenberger this morning.

7 THE COURT: I don't know what he said to  
8 Ms. Greenberger.

9 MR. AMPAR&Aacute;N: Just goes to his bias and  
prejudice.

10 THE COURT: You raised the issue. You raised the  
11 issue of whether he made these calls and believes that he is  
12 being harassed by you or your co-counsel. He said he did make  
13 the calls and he testified as to what occurred, so I think that  
14 is -- that subject is covered. I think it's out there.

15 MR. AMPAR&Aacute;N: I think there are issues relating  
both  
16 in terms of taxes and calling Ms. Greenberger a drag queen,  
17 that goes to his veracity and credibility and his bias.

18 THE COURT: And all of that was explored in his  
19 testimony. His bias, his veracity, his antagonism towards you.  
20 It was all explored. The proposed testimony about that he said  
21 something to Ms. Greenberger today or yesterday --

22 MR. AMPAR&Aacute;N: This morning.

23 THE COURT: -- this morning, that is outweighed by  
24 the undue consumption of time and a collateral issue.

25 MS. GREENBERGER: I just want the record to reflect

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1 that he has made statements every time I've left the courtroom,  
2 and I am concerned, and I just want the record to reflect my  
3 fear for statements that he has made to me all morning every  
4 time I walk out of the courtroom.

5 THE COURT: Well --

6 MR. BEVAN: Your Honor, the one point I do want to  
7 put on the record --

8 THE COURT: Yeah.

9 MR. BEVAN: -- the last question was Your Honor  
10 instructed or advised the jury was --

11 THE COURT: You mean this one: Isn't it true that  
12 you use your connections with Mr. Bevan to shake-down people in  
13 the community and not pay because you know you can't be  
14 prosecuted, that question?

15 MR. BEVAN: Right.

16 THE COURT: Yeah. What was the basis for asking  
17 that question?

18 MR. AMPAR&Aacute;N: I have been told by certain  
suppliers

19 that Mr. Martin has not paid and used his relationship and his  
20 alleged connection both to the Justice Department and the DEA  
21 agents, Mr. Bevan, so that he feels he can act in a certain  
22 manner without -- that is unapproachable.

23 THE COURT: Okay.

24 MR. AMPAR&Aacute;N: That he has the protection of the  
25 federal government to do what it is he wants to do.

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1 THE COURT: Okay. Thank you.

2 Moving right ahead now. So what -- what is next  
3 in -- do you have -- yeah, I understand Mr. Watts.

4 MR. BEVAN: Mr. Watts is in custody, Your Honor.

5 THE COURT: Oh, he is? So is he going to testify  
6 this afternoon?

7 MR. BEVAN: That would be my request. I would ask  
8 that he appear before Your Honor. He is in DEA custody and in  
9 their space now. I have no objection to having him released --  
10 brought here, released subject to Your Honor's order that he  
11 not leave until he testifies, not leave the building, and that

12 is really my only interest that he be here available.

13 MR. AMPAR&Aacute;N: Can I ask if Mr. Watts' counsel has  
14 been advised of any of this?

15 THE COURT: No idea. That is not my -- you want him  
16 released? Do you want him brought?

17 MR. BEVAN: My request is that he be brought here,  
18 be ordered by Your Honor to be back here. The defense is  
19 finished with Mr. Martin, so we would call him when we resume.

20 THE COURT: At 1:00.

21 MR. BEVAN: 1:20.

22 THE COURT: We'll have him brought here at 1:20 or  
23 I'll be here at 1:00.

24 MR. BEVAN: That would be fine.

25 THE COURT: I'll be here at 1:00 so I can talk to

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1 him at 1:00 o'clock. He failed to appear. I want to find out  
2 what's going on. So he'll testify, and then after that is  
3 there anybody else?

4 MR. BEVAN: No, Your Honor.

5 THE COURT: Okay.

6 MS. GREENBERGER: May I just make one more  
7 statement? With regard to the tax records, I just want the  
8 record to be clear that we did request these records in  
9 multiple forms. We filed a supplemental motion for expedited  
10 discovery --

11 THE COURT: Counsel, I'm not saying it's not  
12 relevant or it can't be considered. I said that it was  
13 cumulative and undue consumption of time, and basically,  
14 collateral in terms of the principal issues to be tried here.  
15 So whatever you filed, you filed. All right? I don't want to

16 revisit the subject right now. You filed it. And I didn't  
17 deny it on that basis, either.

18 MS. GREENBERGER: And Your Honor said you would wait  
19 to hear the testimony --

20 THE COURT: I've heard it. I've heard it. I  
21 listened to it for an hour or so. Now I've heard it. Now I've  
22 ruled, now we move on.

23 I have a question. Exhibit No. 83, which is a small  
24 claims court --

25 MR. BEVAN: Right.

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1 THE COURT: -- proceeding. That exhibit that has  
2 been received into evidence is different from the one that is  
3 in my book. And the one in my book contains a declaration by  
4 Carol Ruth Silver as counsel for Mr. Rosenthal in which she  
5 says that the purpose of the checks and the debt that was owed  
6 was for providing marijuana. That is what the declaration  
7 says. Which, of course, is totally consistent with this  
8 witness' testimony. And these are admissions by counsel for  
9 the defendant as to what the purpose was in the check action.

10 But I didn't understand when I heard the testimony  
11 and I looked in my exhibit book, I assumed that all that is in  
12 evidence. Then I asked Barbara, my -- anyway, I just point  
13 that out. I have no idea what the state of the exhibit is --  
14 well, I see the exhibit in front of me, but the exhibit I have  
15 in my book has the declaration --

16 MR. BEVAN: Well, they --

17 THE COURT: -- of counsel for Mr. Rosenthal.

18 MR. BEVAN: Your Honor, that is fair comment. I --

19 I removed the post-trial brief when I showed the witness  
20 because I felt that the claim -- I was talking about the claim,  
21 so I only showed him the claim and not the brief.

22 THE COURT: Yes, but, of course, the statement of  
23 Carol Ruth Silver is an admission.

24 MR. BEVAN: I will proffer --

25 THE COURT: I just say there is a disparity

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1 between -- No. 1, there is a disparity between what the exhibit  
2 is in my book and what the exhibit was at the time.

3 No. 2, it appears to me that it's an admission. At  
4 that point, I'll certainly hear from counsel if you think that  
5 that comes in.

6 MR. AMPAR&Aacute;N: Well, I think that I was operating  
off  
7 the document -- my belief is I had copies of Carol Ruth  
8 Silver's affidavit but I thought the question and the document  
9 that the witness was dealing with was the small claims form  
10 action rather than --

11 MR. BEVAN: The complaint.

12 MR. AMPAR&Aacute;N: -- the complaint component rather  
than  
13 the other pleading.

14 THE COURT: I'm sure that is correct, but the fact  
15 of the matter is he was cross-examined on the issue of what was  
16 the purpose of these checks.

17 MR. AMPAR&Aacute;N: That was bounced checks, not  
plants.

18 THE COURT: Pardon me?

19 MR. AMPAR&Aacute;N: If you look at the complaint, that  
was  
20 my objection when he was asking the question.

21 THE COURT: Yeah.

22 MR. AMPAR&Aacute;N: The complaint on its face.

23 THE COURT: I don't disagree with that, for bad  
24 checks, so the question is what were -- so the issue was he  
25 says they weren't bad checks and he explains why. But the

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1 question was, in his direct testimony, what was the purpose of  
2 these checks. There is a big issue. The purpose of the check  
3 was to pay a PG&E bill or was it to pay for clones, for  
4 marijuana?

5 And the clear inference at least an inference, I  
6 don't know how clear it is, the Government's inference it was  
7 for marijuana. The witness testified was for marijuana. The  
8 cross-examination suggested that it wasn't for marijuana. And  
9 yet Mr. Rosenthal's attorney said it was.

10 So that -- and that's a significant issue. Whether  
11 or not he sold marijuana to Harm. That's an issue, isn't it?  
12 You don't concede it. You don't concede that he did.

13 Well, you are saying nothing. I mean, do you  
14 concede?

15 MR. AMPAR&Aacute;N: It's my understanding the evidence  
16 shows that Mr. Rosenthal may have supplied clones, but I don't  
17 know how sufficient the record is on that issue.

18 THE COURT: Well, okay. So you -- I'm not asking  
19 you to concede it. I'm just saying that since that's an issue,  
20 the statements of his counsel seem to be admissible. If you  
21 think contrary, I'll hear some discussion about it, okay?

22 All right. We are in recess.

23 MR. AMPAR&Aacute;N: What time?

24 THE COURT: 1:00 o'clock for the witness, if you  
25 want to be here for the witness to be released.

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1 MR. BEVAN: Thank you, Your Honor.

2 (Lunch recess taken at 12:20 p.m.)

3 (Proceedings resumed at 1:02 p.m.)

4 THE COURT: Okay. Let the record reflect that the  
5 parties are present. Mr. Watts is present.

6 MR. BEVAN: Your Honor, just for the benefit of  
7 Mr. Watts, this morning, I asked -- actually, after I think the  
8 first witness or the second witness, I informed the Court that  
9 Mr. Watts had been advised to be here this morning by David  
10 Mateer yesterday.

11 And I also left a memo on Mr. Watts' phone wherein I  
12 said that he needed to be here this morning, and if he wasn't,  
13 I would ask Your Honor for an arrest warrant. I gave him -- we  
14 waited until the second witness or so had finished, and when I  
15 didn't see Mr. Watts, I brought the matter up to your  
16 attention.

17 THE COURT: Right.

18 MR. BEVAN: I just want to inform Mr. Watts that the  
19 only reason we had agents bring him in in this fashion was to  
20 secure his attendance so we could finish our case.

21 THE COURT: Fine, so I discharged the warrant.

22 I would ask, Mr. Watts, that you remain in this  
23 courtroom. Just have a seat in the body of the courtroom and  
24 you will be called as the first witness as soon as the jury  
25 returns. Thank you very much.

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1 Can we take up the other matter?

2 (Other non-related case heard; proceedings  
3 resumed/Jury in at 1:35 p.m.)

4 THE COURT: Okay. Let the record reflect all jurors  
5 are present.

6 Ladies and gentlemen, I'm sorry for the delay. I  
7 had another matter totally unrelated to this matter that I had  
8 to take care of. So let me thank you.

9 Mr. Bevan, you may call your next witness.

10 MR. BEVAN: Yes, Your Honor. The United States  
11 would call Richard Watts, W-a-t-t-s.

12 RICHARD BUCAKAN WATTS,  
13 called as a witness for the plaintiff, having been duly sworn,  
14 was examined and testified as follows:

15 (Witness later is asked to state name on  
16 page 1181.)

17 DIRECT EXAMINATION

18 BY MR. BEVAN:

19 Q. Good morning, Mr. Watts.

20 Are you here today pursuant to a subpoena served on  
21 you by the United States?

22 A. Yes, sir.

23 Q. And how old are you, sir?

24 A. Fifty-two.

25 Q. And are you currently, as you sit there today, within the

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1 last 48 hours, have you taken any drug of any nature, any  
2 prescription or otherwise?

3 A. No.

4 Q. Nothing?

5 A. Last night, I guess.

6 Q. Pardon me?

7 A. Last night, I drank last night.

8 Q. Well, drink, you mean you had alcohol?

9 A. Yeah.

10 Q. Okay.

11 And I'm talking about controlled substances, over  
12 the counter?

13 A. No.

14 Q. Anything that would affect your memory today?

15 A. No.

16 Q. Okay.

17 You need to keep your voice up because the court  
18 reporter -- you have to say something --

19 A. Yeah, I understand, I understand.

20 Q. Okay.

21 Now, several months ago, you pled guilty in this  
22 courtroom to failure to file a federal income tax return for  
23 the tax year 2001?

24 A. That's correct.

25 Q. And you pled guilty pursuant to a plea agreement with the

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1 Government; is that correct? You pled guilty --

2 A. Yes.

3 Q. -- with a plea agreement with the Government; is that  
4 correct?

5 A. No, there was no plea agreement. I -- oh, yeah, I paid a  
6 fine.

7 Q. Pardon me?

8 A. I paid a fine, yes.

9 Q. No, but there is a written agreement with the Government  
10 that allowed you to -- or pursuant to which you entered your  
11 plea before Judge Breyer, you signed a document that was called  
12 a plea agreement, do you remember that?

13 A. Yes, I do remember that.

14 Q. Okay.

15 And you were represented by a lawyer; is that  
16 correct?

17 A. Yes, I was.

18 Q. And as a consequence of that, you admitted that for the tax  
19 year 2001, you had enough income to file a federal tax return  
20 but you didn't, you acknowledged that, pled guilty and was  
21 sentenced, is that a fair summary?

22 A. That's a fair summary.

23 Q. Okay.

24 And you were required to repay the amount of tax  
25 that you agreed to --

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1 A. It was paid.

2 Q. -- repay?

3 And you paid that; is that correct?

4 A. Yes.

5 Q. Okay.

6 And subsequent to you being sentenced by Judge  
7 Breyer, you left the courtroom, and the Government served you  
8 with a trial subpoena for this case; isn't that correct?

9 A. That's correct.

10 Q. You did not agree to cooperate with the Government; isn't  
11 that true?

12 A. That's correct.

13 Q. And you are not happy about being on the witness stand;  
14 isn't that correct?

15 A. That's correct.

16 Q. Would that be fair statement? Okay.

17 But you are here nonetheless and you have an  
18 obligation to -- you just took an oath to give your best effort  
19 with respect to each question in terms of telling the truth.  
20 Do you understand that is your obligation today?

21 A. Yeah, I know.

22 Q. Okay.

23 Now, I want to ask if you recognize the -- do you  
24 recognize anyone in that picture?

25 A. Yes, I do. Myself.

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1 Q. And you are in the blue shirt?

2 A. Yes.

3 Q. And who is the other person in the picture?

4 A. Jason Millard, I believe.

5 Q. Jason Millard?

6 When was that picture taken?

7 A. I'm not sure of the date. It's been so long.

8 Q. Okay.

9 Several years ago?

10 A. (Nodding head.)

11 MR. AMPAR&Aacute;N: I didn't hear a response.

12 THE WITNESS: I'm not sure of the date.

13 BY MR. BEVAN:

14 Q. You have to pay attention when you nod. The court reporter

15 may write down --

16 A. I answered that. I didn't --

17 Q. Okay.

18 A. -- know what the date was.

19 Q. Okay. That's fair.

20 THE COURT: Through an oversight, we didn't ask what  
21 is your full name?

22 THE WITNESS: Richard Bucakan Watts, B-u-c-a-k-a-n,  
23 Watts, like in the light bulb.

24 THE COURT: Thank you.

25 BY MR. BEVAN:

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1 Q. And Mr. Watts, I put on the board Exhibit 96 in evidence.

2 Do you know both those guys?

3 A. Yes, I do.

4 Q. And that is Ken Hayes?

5 A. Yes, it is.

6 Q. And who is the other person?

7 A. Jason Millard.

8 Q. So Jason Millard is in both pictures and that is Ken Hayes?

9 A. Correct.

10 Q. And you and Ken Hayes were involved in starting the --  
11 initially, the start up of the Harm Reduction Center; isn't  
12 that correct?

13 A. That's correct.

14 Q. And your role --

15 MR. BEVAN: Your Honor, I would question this  
16 witness pursuant to 611C.

17 THE COURT: Go ahead.

18 MR. AMPAR&Aacute;N: Sorry, may I have a moment?

19                   We would object to a lack of foundation for  
20 questioning this witness.

21                   THE COURT:  Objection overruled.

22                   Go ahead.

23 BY MR. BEVAN:

24 Q.  Mr. Watts, do you remember when it was that you and Ken  
25 Hayes started up the Harm Reduction Center approximately?

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                  Watts - Direct / Bevan

1 A.  Probably 1999 or something.

2 Q.  Okay.

3                   I'm going to show you a bank signature card, Exhibit  
4 80A in evidence.  And ask you if you recognize the signatures  
5 of Ken Hayes and yourself on the Bank of America signature card  
6 for the Harm Reduction Center account at Bank of America?

7 A.  Yes, I do.

8 Q.  Okay.

9                   Do you recognize both signatures?

10 A.  Both signatures.

11 Q.  And this account was opened, the first statement covers the  
12 period June 30th through July 17th, 2000.  And there is a date  
13 down here of 7/19, does that refresh your recollection at least  
14 in terms of the bank account that was opened up in the time  
15 frame of June or July 2000?

16 A.  I remember it was open.

17 Q.  Okay.

18                   And did you initially have two locations or was this  
19 one location?

20 A.  Originally, we were at 11 -- trying to remember, 1100 block  
21 on Howard Street, but that burned down on April 15th of the

22 year I was supposed to pay my taxes.

23 Q. Okay.

24 And then after Howard Street -- does the address of  
25 1017 Howard Street sound familiar?

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1 A. Something like that, yes.

2 Q. And did you go from Howard Street to 52 6th Street?

3 A. Yes. I did.

4 Q. Okay.

5 Was there a period of time where both locations were  
6 operating?

7 A. Not that I was involved.

8 Q. Okay.

9 So a fire happened on Howard Street and you looked  
10 for other space and found 52 6th Street; is that correct?

11 A. Yeah.

12 Q. Or Mr. Hayes did?

13 A. Howard Street burnt down and then we had to go build  
14 another site.

15 Q. Okay.

16 Exhibit 82, Mr. Watts, is entitled Lease Summary.

17 And this is between Ken Hayes and Henry Carneillowitz?

18 MR. AMPAR&Aacute;N: Actually, we would object to  
Counsel

19 testifying and --

20 THE COURT: He can ask leading questions. He can  
21 ask leading questions.

22 MR. AMPAR&Aacute;N: I forgot where we were at.

23 BY MR. BEVAN:

24 Q. Is this is a lease as of November 1, 2000 for 52 6th

25 Street? Do you recognize the signature, Ken Hayes on this

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1 lease?

2 A. I've never seen that before so.

3 Q. Okay.

4 But look at the signature. Do you recognize the  
5 signature of Ken Hayes?

6 A. I'm not that familiar with the signature. Sorry.

7 Q. Okay.

8 Well, on the bank signature card you said you  
9 recognized Ken Hayes' signature. You just testified that  
10 that -- that on 80A that is his signature?

11 A. I recognize his name. I didn't recognize the --

12 Q. You recognize his name, but you don't know his signature?

13 A. No.

14 Q. You got to say something.

15 A. No.

16 Q. So you -- is it your testimony you don't know that this is  
17 the lease under which you took possession of 52 6th Street?

18 A. I was never involved with that part of any business.

19 Q. Okay. That's fair.

20 Now, you did have authority to sign checks, didn't  
21 you?

22 A. In order to buy building materials, yes, I did.

23 Q. Well, didn't you sign checks, for example, for payroll?

24 A. There was not really any payroll because there wasn't any  
25 money.

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1 Q. Well, as you began to operate, wasn't there money?

2 A. Rarely. I'm still owed a lot of money from them.

3 Q. Okay.

4 Well, didn't you -- didn't more than \$900,000 get  
5 deposited to the account of Harm Reduction Center while you  
6 operated it with Ken Hayes?

7 A. I have no idea. I'm not an accountant.

8 Q. Do you have any idea how much money was deposited to the  
9 bank account of Harm?

10 A. No.

11 Q. Does the figure of approximately \$900,000 surprise you?

12 A. I can't answer that, I don't know.

13 Q. Okay.

14 Showing you Exhibit 80B. Take a look at each one of  
15 these checks, Mr. Watts, and tell me whether or not you signed  
16 every one of those checks.

17 A. Yes, looks like my signature is on these checks.

18 Q. Okay.

19 And the memo line on each one of those checks  
20 doesn't it refer to payroll?

21 A. And petty cash.

22 Q. Okay.

23 So does that refresh your recollection that you were  
24 writing checks for payroll?

25 A. There wasn't really payroll there. It was people were

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1 volunteering to help build and this was mainly for materials.

2 Q. Okay. Okay.

3 But did you write checks to cash and then pay people  
4 for them volunteering?

5 A. No. That wasn't the policy. The policy was if they needed

6 a place to stay, because most of them were homeless, that  
7 they -- that we would shelter them.

8 Q. But did you write those checks and cash --

9 A. These are checks that were mainly for building materials.

10 Q. Okay.

11 Even though they said payroll and petty cash?

12 A. It was probably reimbursing what I had already spent is  
13 what most of these are.

14 Q. Well, the first one is \$3250 on November 17th, 2000.

15 Payable to cash. Says payroll and petty cash.

16 MR. AMPAR&Aacute;N: I would object. The witness has  
17 already answered and the counsel is being --

18 THE COURT: Overruled.

19 BY MR. BEVAN:

20 Q. What did you do with that money?

21 A. I have -- what I did with the funds that I had, I used for  
22 building materials.

23 Q. Okay.

24 The second check is for \$4863 payable to cash. It  
25 says payroll. Did you cash that check and pay -- make payroll

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1 with that money?

2 A. I don't remember. Everything happens so quickly when you  
3 are building like that. You are trying to push things through,  
4 you just do what you have to do.

5 Q. Well, the third check is for \$6300 for payroll payable to  
6 cash, did you cash that and pay the employees?

7 A. Like I said, we didn't really have -- all these checks here  
8 were for operating the building, the machine that we -- was

9 operating.

10 Q. Okay.

11 And just for the record, these checks are in the  
12 amount of I mentioned 6100. The next one is 3800. The next is  
13 4400. The next is 4000.

14 MR. AMPAR&Aacute;N: This isn't a question. He is  
merely

15 reading into the record at this point.

16 THE COURT: Yeah, it's called impeachment. Excuse  
17 me, Counsel, the witness says he didn't write -- he didn't make  
18 payroll. So Counsel is entitled to read into the record, which  
19 is in evidence, checks for cash which are listed as payroll.  
20 He is entitled to do that. He can cross-examine this witness.  
21 That is the way I rule. He can cross-examine him, as can you.  
22 You are both entitled to cross-examine this witness.

23 MR. AMPAR&Aacute;N: Okay.

24 THE COURT: And that means he can ask leading  
25 questions. He can take exhibits that are in evidence if this

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1 witness may have some familiarity with and ask him if this  
2 witness signed all those checks.

3 Go ahead.

4 BY MR. BEVAN:

5 Q. The next check is \$3900, says payroll.

6 A. Can I say something?

7 Q. Sure.

8 A. I wouldn't remember those checks. I wrote them as fast as  
9 I needed them to. And I, you know, I wasn't thinking about it.

10 Q. What they were for?

11 A. I was thinking more about what material I was going to buy.

12 Q. So just to finish, the next check is \$4150 to -- dated  
13 January 15th, 2001, payroll; next check 4575, says payroll.  
14 All payable to cash.

15 Exhibit 80C in evidence. Payable -- a check payable  
16 to Occidental Express for \$5000, deposit; is that your  
17 signature, Mr. Watts?

18 A. I believe that it was for rent.

19 Q. Is that your signature?

20 A. Yes.

21 Q. And that is the deposit with Mr. Carneillowitz for the 6th  
22 Street location; is that correct?

23 A. That's correct.

24 MR. BEVAN: 80B in evidence.

25 BY MR. BEVAN:

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1 Q. This is a series of checks, Mr. Watts. Here, again, would  
2 you look through each one of these checks, and I'll ask you  
3 whether or not you recognize your signatures on these checks.

4 A. Yes.

5 Q. Okay.

6 You signed all these checks, correct?

7 A. Correct.

8 Q. And these checks were to pay for marijuana that the Harm  
9 Reduction Center purchased from vendors for resale; is that  
10 correct?

11 A. I don't know. I would just sign them when Ken was not  
12 there because I could sign them.

13 Q. Well, these checks in this packet, Exhibit 80D, are all  
14 payable to cash; isn't that correct?

15 A. I would assume so.

16 Q. And they have a notation on each one of the checks who the  
17 vendor is; isn't that true? For example, the first one says  
18 "Bart." Wasn't one of the vendors of marijuana that you  
19 purchased marijuana from nicknamed Bart?

20 A. I wasn't involved with the vendors. I was only doing the  
21 construction.

22 Q. Okay.

23 Well, the first check is \$5000 cash, memo says Bart,  
24 wasn't that a payment for marijuana that was purchased from a  
25 man named Bart?

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1 MR. AMPAR&Aacute;N: Objection, lacks foundation and  
calls

2 for speculation. The witness has testified he is not involved.

3 THE COURT: He can -- he knows or doesn't know.

4 THE WITNESS: I don't know.

5 BY MR. BEVAN:

6 Q. Do you know who Bart is?

7 A. No, I don't.

8 Q. The next check is for \$5000 cash payable to Pineapple, or  
9 for Pineapple, isn't that one of the nicknames of one of the  
10 marijuana vendors, Pineapple?

11 A. Could be.

12 Q. Do you know a man by or a lady by the name of Pineapple?

13 A. No. That's a fruit.

14 Q. I understand it's a fruit. But even though it's a fruit,  
15 was there a person named Pineapple --

16 A. Not that I know of.

17 Q. Let me finish my question.

18 Was there a person named Pineapple or nicknamed

19 Pineapple that sold marijuana to the Harm Reduction Center?

20 MR. AMPAR&Aacute;N: I'm going to object. Lacks  
21 foundation, calls for speculation.

22 THE WITNESS: George, I don't know. The only reason  
23 I signed those checks was because I could.

24 BY MR. BEVAN

25 Q. You what?

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1 A. I don't -- you know, if Ken wasn't around and one of the  
2 people came up and said, sign this, yes, I signed it.

3 Q. Okay.

4 The next check is \$7000 payable to cash, the memo is  
5 Bart, hyphen, "Mendo Endo."

6 A. I still --

7 Q. Isn't that an abbreviation for Mendocino something?

8 A. It could be that he is from Mendocino.

9 Q. You were buying marijuana out of Mendocino?

10 A. I'm not buying marijuana.

11 Q. The club was buying marijuana?

12 A. I'm signing checks because I can.

13 Q. Okay.

14 A. And that was -- I was doing construction work and very  
15 quickly one of the other people that was there would ask me to  
16 sign a check and I would sign it.

17 Q. Okay.

18 A. Because I could.

19 Q. The next check is for 2500, memo, Egg Man. Did you call  
20 anybody Egg Man that supplied marijuana to the Harm Reduction  
21 Center?

22 A. Me personally? No.

23 Q. I didn't hear.

24 A. Me personally, no.

25 Q. You don't know an Egg Man?

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1 A. No.

2 Q. Next check is \$5000, again to Bart, your answers would be  
3 the same? You don't know a Bart?

4 A. I vaguely remember someone named Bart.

5 Q. Okay.

6 And Bart supplied marijuana to the club; is that  
7 correct?

8 A. I couldn't tell you because I was too busy doing the  
9 construction work.

10 Q. Okay.

11 You were constantly building?

12 A. I -- wanted -- there was a -- safety factors because the  
13 fact was that the building was open at the time we were doing  
14 construction. So I was more concerned with safety factors and  
15 getting the job done.

16 Q. Okay.

17 A. I spent more time running back and forth to Home Depot than  
18 anything else.

19 Q. Okay.

20 Here is a check for \$1800 payable to cash, memo  
21 Pineapple, your answer is the same?

22 A. Yes.

23 Q. Next check, \$5000, memo, Bart, payable to cash.

24 Next check, \$4000, payable to PO Bart. Again, if I  
25 asked you about Bart, your answers would be the same?

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1 A. Correct.

2 Q. Next check, \$4000 cash, payable -- or memo Bart, you are  
3 not issuing BART tickets to the volunteers are you?

4 A. Not that I know of.

5 Q. Okay.

6 Next check is \$3500 payable to cash for the Egg Man.

7 Same answer, you don't know?

8 A. Yeah, I don't.

9 Q. \$4000 check to cash for Egg Man. \$2000 check for  
10 Pineapple. So if I asked you about each one of those checks,  
11 would your answers be the same?

12 A. Yes, it would.

13 Q. Now, the fact is that the Harm Reduction Center acquired  
14 marijuana from various vendors for resale; isn't that correct?

15 MR. AMPAR&Aacute;N: Objection, lacks foundation calls  
16 for speculation.

17 THE COURT: Overruled.

18 THE WITNESS: You don't understand, that wasn't my  
19 job. My job was to build and to keep people safe.

20 BY MR. BEVAN:

21 Q. You worked at Harm Reduction Center on a daily basis,  
22 wouldn't that be fair to say?

23 A. Yes.

24 Q. That was your life?

25 A. At the time, yes.

Watts - Direct / Bevan

1 Q. Okay. 2000, 2001, you were there virtually every day;

2 isn't that correct?

3 A. No. When the job was done, I left.

4 Q. Okay.

5 But week in and week out wouldn't it be a fair  
6 statement that you were there at least five days a week?

7 A. Probably seven.

8 Q. Pardon me?

9 A. Seven.

10 Q. Seven days a week.

11 Did you ever see vendors coming into the Harm  
12 Reduction Center bringing marijuana for the Harm Reduction  
13 Center to purchase for resale? Did that happen?

14 A. What happened was people would walk around, come in and  
15 out, and it was more of a safety issue because the construction  
16 was going on --

17 Q. Okay.

18 A. -- that I was --

19 Q. Let me approach it this way: Did the Harm Reduction Center  
20 sell marijuana?

21 A. Yes, I believe so.

22 Q. What?

23 A. Yes, I believe so.

24 Q. Yeah.

25 And so where did the Harm Reduction Center get the

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1 marijuana that it sold?

2 A. I don't know.

3 Q. Did you get it from other -- from vendors?

4 A. Did I get it? No.

5 Q. Did you grow it in the basement?

6 A. Did I grow it? No.

7 Q. Was marijuana grown in the basement?

8 A. There was a facility built that you could grow any type of  
9 vegetable.

10 Q. Okay.

11 That wasn't my question, sir. My question is: Were  
12 marijuana plants grown in the basement of the Harm Reduction  
13 Center during the period --

14 A. Not when I was there.

15 Q. Let me finish.

16 -- 2000, 2001, up to February 12th, 2002?

17 A. No, I -- I left to do another job on 10th Street. And they  
18 were doing some downstairs, but I didn't --

19 Q. You didn't know what it was?

20 A. I knew what it was.

21 Q. You built it?

22 A. It doesn't concern me.

23 Q. Didn't you build the grow?

24 A. You could have grown anything there.

25 Q. Did you build a grow facility in the basement, Mr. Watts?

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1 A. Yes, I did.

2 Q. Okay.

3 So there is no -- there is no mystery, right, as to  
4 what was grown at the Harm Reduction Center in the basement?

5 A. No.

6 Q. Isn't that right?

7 A. No.

8 Q. Isn't marijuana grown there?

9 A. Well, there were other things growing there. But --  
10 Q. Well, let's start with marijuana plants. Were marijuana --  
11 A. Yes, I saw marijuana plants.  
12 Q. And you built that specifically for the growing of  
13 marijuana plants; isn't that true?  
14 A. Um.  
15 Q. That was your job?  
16 A. Oh, yeah. Yes.  
17 Q. You were the contractor?  
18 A. Pardon?  
19 Q. You were the contractor, the carpenter?  
20 A. No, I wasn't. I was a carpenter.  
21 Q. You are good at that, right?  
22 A. I try to be.  
23 Q. And that was one of the things you did, you constructed the  
24 grow, you bought lights, and the other things, ballasts and  
25 everything else that is required to grow marijuana and you set

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1 it up; isn't that true?  
2 A. I think someone donated that stuff.  
3 Q. Well, whatever.  
4 A. It was used equipment, as I remember.  
5 Q. Did you assemble it?  
6 A. No, electricians from -- I forget where he was from.  
7 Q. Okay.  
8 A. They wired the downstairs.  
9 Q. You assisted?  
10 A. Yes, I did.  
11 Q. Okay.  
12 And were you growing marijuana in the basement of 52

13 6th Street in the year 2000?

14 A. Was I?

15 MR. AMPAR&Aacute;N: Vague as to "you."

16 BY MR. BEVAN:

17 Q. Let's have a nomenclature understanding, if I say you, I'm  
18 referring to the Harm Reduction Center and anyone else  
19 associated with --

20 THE COURT: I don't think you can. It will be  
21 misleading in the record.

22 BY MR. BEVAN:

23 Q. Mr. Watts, did you personally ever grow a marijuana plants  
24 in the basement?

25 A. Myself? No.

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1 Q. Did you ever turn the lights on in the basement?

2 A. Oh, yeah.

3 Q. And there were plants under the lights?

4 A. Plenty of them.

5 Q. Okay.

6 So what do you mean if you are turning the lights on  
7 on the plants --

8 A. No, they are on a timer.

9 Q. Did you turn the timers on?

10 A. The electricians did, I'm sure.

11 Q. Okay.

12 THE COURT: Put it back.

13 MR. BEVAN: Pardon me, Your Honor.

14 THE COURT: Put it back so everyone can see.

15 BY MR. BEVAN:

16 Q. Could you lean forward, Mr. Watts.

17 Can you see the pictures that are on board Exhibit  
18 70 in evidence?

19 A. Yes, I can.

20 Q. Do you recognize the Harm Reduction Center sign?

21 A. Yes, I do. I installed it.

22 Q. Pardon me?

23 A. I installed it.

24 Q. You installed it. By yourself?

25 A. With the help of one other person.

1200

Watts - Direct / Bevan

1 Q. Okay.

2 And that is the telephone number for the -- for the  
3 center?

4 A. I believe so.

5 Q. Okay.

6 And Exhibit D is that the grow area that you  
7 constructed?

8 A. Yeah, looks familiar.

9 Q. Pardon me?

10 A. Looks familiar, yes.

11 Q. Okay.

12 Showing you Exhibit 80G, look through here,  
13 Mr. Watts, satisfy yourself that you signed those checks.

14 A. Yes, I did.

15 Q. You did?

16 And those checks had to do with grow equipment;  
17 isn't that true?

18 A. Yes, I'm pretty sure that's what it was.

19 Q. Well, the first check it looks like \$372.35, payable to

20 Mothers, and it says memo grow equipment. And the endorsement  
21 is Mike Foley. Do you know Mike Foley?

22 A. Yes, I do.

23 Q. And he had a -- did he have a business or a equipment  
24 outlet called Mothers?

25 A. He must have.

1201

Watts - Direct / Bevan

1 Q. Pardon me?

2 A. He must have.

3 Q. And this was for grow equipment in the basement, right?

4 A. I would assume so.

5 Q. And then a second check to Mothers also says grow  
6 equipment. Did I read that right?

7 A. That's what it says.

8 Q. And is that for the basement?

9 A. I'm not sure which facility those are for.

10 Q. This could be over on Howard Street?

11 A. Could be.

12 Q. Did you have a grow room on Howard Street?

13 A. I think they sold equipment at Howard Street, they didn't  
14 grow at Howard Street.

15 Q. Here is another check to Mothers for material.

16 Next check for Mothers, indoor plant and garden,  
17 meters, pH and something else. Isn't that for the grow?

18 A. Yeah, that would be -- if they were -- it would depend on  
19 which facility, like I said.

20 Q. Well, it's either/or, right?

21 A. The -- you would have to go back to the whole date thing.

22 Q. Okay.

23                   Here is a check to Michael Foley, \$2000, equipment  
24 loan. What was that for?  
25 A. It was probably for equipment that they sold or something. 1202

                  Watts - Direct / Bevan

1 You know?  
2 Q. What about a check to Mothers for \$9171.55 for lighting  
3 equipment? Isn't that for the grow?  
4 A. I think all those are from one in the first place that was  
5 selling equipment --  
6 Q. Um-hum.  
7 A. As I remember.  
8 Q. Where did the light come from that you installed or had  
9 installed in the basement of Harm?  
10 A. You would have to ask the electrician.  
11                   MR. AMPAR: Misstates the testimony. He never  
12 said that he installed the grow lighting equipment.  
13                   THE WITNESS: Electricians.  
14 BY MR. BEVAN:  
15 Q. Where did the lights come from that the electrician  
16 installed?  
17 A. Most of those I think were donated actually.  
18 Q. Was what?  
19 A. Donated.  
20 Q. Donated?  
21 A. Yeah, passed down to 6th Street.  
22 Q. Do you know Mr. Rosenthal?  
23 A. Yes, I've seen him before and I know him a lot more now.  
24 Q. Do you see him in this courtroom?  
25 A. Yes, I do.

1203

1 Q. And did Mr. Rosenthal supply or sell plants to the Harm  
2 Reduction Center?

3 A. That wasn't my part of the business, so I -- you know, I  
4 don't know what they did. People were walking in and out.

5 Q. Is that your testimony? Is that your testimony that you  
6 don't know --

7 A. I'm not sure.

8 Q. Let me finish the question.

9 Is that your testimony that you don't know whether  
10 or not Ed Rosenthal sold plants to the Harm Reduction Center?

11 A. Like I said, I didn't really pay that much attention to  
12 what else was going on other than what I was concentrating on,  
13 you know, trying to put building material up and, you know.

14 Q. So your answer is you don't know? Or you don't want to  
15 say?

16 A. I don't know. You know, I can't -- I didn't pay attention.  
17 If I paid more attention, I could say positively one way or the  
18 other.

19 Q. Let me show you 75B, it's a typewritten letter from you to  
20 Mr. Rosenthal, dated February 1st, 2002, in evidence as 75B.

21 A. That's right.

22 Q. Are you familiar with this letter?

23 A. Yes, I am.

24 Q. You typed it, didn't you?

25 A. I'm one -- one of the girls typed it.

1204

1 Q. Some --

2 A. One of the patients.

3 Q. Okay.

4                   And did you tell her what to write?

5   A.  No, they were upset about something and that was it.

6   Q.  Okay.

7                   That is not you speaking in that letter?

8   A.  No, it was one of the patients.  I was actually out of  
9   the -- I was no longer working at this address at that time.

10  Q.  No longer what?

11  A.  Working at this address.  I was on another job, when this  
12  one was done.

13  Q.  Is it your sworn testimony that the letter that was typed  
14  that says Rick or Richard Watts, executive director, addressed  
15  to Mr. Rosenthal complaining about diseased plants that he,  
16  according to that letter, supplied to the Harm Reduction  
17  Center, that letter does not represent your thoughts that went  
18  into that letter; is that correct?

19  A.  The reason this letter here was never sent, right, and  
20  that's because I felt that the plants or whatever -- people  
21  have been donating all, and if the patients were upset, it's  
22  probably because they weren't donated.

23  Q.  Um-hum.

24  A.  That's the impression I got.

25  Q.  Well, did Mr. Rosenthal supply plants to Harm Reduction

1205

                  Watts - Direct / Bevan

1   Center that someone else felt were diseased?

2   A.  The patients had their own little thing going the whole  
3   time.

4   Q.  Um-hum.

5                   Where was that letter typed?

6   A.  Probably at 6th Street, looks like.

7 Q. Would it surprise you to learn that that letter was found  
8 on your computer?

9 A. I took the computer because they owed me money.

10 Q. Okay.

11 It was found on your computer at 582 Bowden  
12 (phonetic), where you lived?

13 A. Yep.

14 Q. Your personal computer?

15 A. They owed me so much money I had to start trying to collect  
16 it.

17 Q. So did the -- did the woman that typed that letter come to  
18 your house to type the letter on the computer?

19 A. No. I didn't start taking stuff out of there until I moved  
20 to the next job. So this here would be February, so I think I  
21 started the next job on this date, actually.

22 THE COURT: What exhibit number is it?

23 MR. BEVAN: 75B.

24 THE COURT: Seventy-five?

25 MR. BEVAN: B.

1206

Watts - Direct / Bevan

1 THE COURT: Thank you.

2 BY MR. BEVAN:

3 Q. So the letter the first paragraph says, "Clones which I  
4 received from you over the last month" --

5 A. I said, George, I didn't write the letter.

6 Q. Let me finish.

7 "Clones which I received from you over the last  
8 month have been infested with root aphids. Four customers have  
9 complained and two are demanding that I pay for their entire  
10 crops which were ruined after they introduced your clones into

11 the crop." Period.

12 Did you -- when it says "I," are you now saying  
13 under oath that that is not you?

14 A. It was the patients. They weren't happy. The letter was  
15 written. It was typed on a computer. You know, I never really  
16 saw it.

17 Q. Well, why is it directed at Mr. Rosenthal?

18 A. I guess they weren't happy with him.

19 Q. How would they know that the plants came from  
20 Mr. Rosenthal?

21 A. You have to ask them that.

22 Q. Well, I'm asking you that.

23 How did they know to write this letter?

24 A. I don't know. They had a social thing going on that I  
25 didn't -- didn't pay that much attention to.

1207

Watts - Direct / Bevan

1 Q. So do you acknowledge, Mr. Watts, that you signed a lot of  
2 checks for Harm?

3 A. I did a lot of building.

4 Q. Okay.

5 And the checks that are made payable and I've asked  
6 you about today, notwithstanding what the memo on the check  
7 says, is your testimony that that was for building materials?

8 A. If I signed them, it probably was, but I might have signed  
9 checks, you know, if they asked because Ken wasn't there.

10 Q. Okay.

11 Now, you said that you were around the Harm  
12 Reduction Center about seven days a week?

13 A. Yeah.

14 Q. And marijuana was sold there on a daily basis; isn't that  
15 correct?

16 A. They had a steady stream of people coming in and out.

17 Q. Okay.

18 Other things were sold, but isn't it true that on a  
19 regular basis marijuana was sold?

20 A. I would assume so, yeah.

21 Q. That's true, isn't it?

22 A. Yeah.

23 Q. And if someone else -- if that marijuana actually was  
24 purchased by vendors to be sold at the Harm Reduction Center,  
25 your testimony is that someone else was responsible for that

1208

Watts - Direct / Bevan

1 aspect of the business; isn't that correct?

2 A. That's correct.

3 Q. But even though you weren't responsible for that end of the  
4 business, you were aware that marijuana was being purchased for  
5 resale at the Harm Reduction Center; isn't that true?

6 A. Yeah. I was doing construction. It was also a danger  
7 factor, a safety factor, you know, if people were stoned, it  
8 was -- you know, I would be aware of my surroundings.

9 Q. You used some of the marijuana that was being sold?

10 A. Oh, yeah.

11 Q. That was part of your compensation, you got marijuana in  
12 part?

13 A. Yeah, I have a lot of pain.

14 Q. Okay.

15 Where did you take the marijuana from the counter or  
16 was it in the counter?

17 A. Someone would usually walk up smoking a joint.

18 Q. Okay.

19 So how often did you take marijuana out of the  
20 supply to use for yourself?

21 A. That wasn't my part of the job. I was not a bug tender as  
22 they call them.

23 MR. BEVAN: Exhibit 90.

24 ///

25 BY MR. BEVAN:

1209

Watts - Direct / Bevan

1 Q. Showing you a picture, sir, of that person, have you seen  
2 that person?

3 A. No. Don't recognize this person.

4 Q. What's that?

5 A. I don't recognize this person.

6 Q. Okay.

7 You don't know a person by the name of Brian  
8 Lundeen?

9 A. No, I don't.

10 Q. You don't know if he delivered plants to the Harm Reduction  
11 Center for Mr. Rosenthal?

12 A. I don't know this person.

13 Q. Now, when agents searched the Harm Reduction Center on  
14 February 12, 2000 --

15 A. Correct.

16 Q. -- and they searched your house --

17 A. Correct.

18 Q. -- seized at least one computer?

19 A. They took everything I owned.

20 Q. Okay.

21                   And in your truck you had a checkbook for the Harm  
22 Reduction Center, didn't you?

23 A. That's correct.

24                   MR. BEVAN: Exhibit 97.

25 BY MR. BEVAN:

1210

Watts - Direct / Bevan

1 Q. What was this checkbook doing in your truck?

2 A. So I could buy building material.

3 Q. What's that?

4 A. So I could buy building material.

5 Q. More building material as of February 12 --

6                   THE COURT: What exhibit is that?

7                   MR. BEVAN: Exhibit 79.

8                   MR. AMPAR&Aacute;N: Ninety-seven.

9                   MR. BEVAN: What did I say?

10                  THE COURT: Seventy-nine? Okay. Seventy-nine  
11 admitted without objection.

12                                   (Plaintiff's Exhibit 79 was received in  
13                                   evidence.)

14 BY MR. BEVAN:

15 Q. This still smells like marijuana, doesn't it?

16 A. I can't smell it.

17 Q. Smell it. You don't smell marijuana?

18                   Now, if you look in there, there are blank checks in  
19 there that aren't signed?

20 A. I'm sure there are.

21 Q. And my question to you is how did that checkbook get into  
22 your truck?

23 A. Probably because I was buying building materials, I just  
24 said that to you.

25 Q. And how long had it been in your truck?

1211

Watts - Direct / Bevan

1 A. I'm not sure.

2 Q. For more than a day?

3 A. I wasn't the only person that drove the truck, too.

4 Q. Pardon me?

5 A. I wasn't the only person that drove the truck also. Ken  
6 would drive the truck.

7 Q. All right.

8 Were you driving around with the checkbook in your  
9 truck?

10 A. If it was in the truck, it was in the truck.

11 Q. Okay.

12 Was there any money in the truck?

13 A. No, not that I know of. The only money I have was on me.

14 Q. And you had \$5000 on you?

15 A. That was for building material.

16 Q. And the \$5000 that you had on you was that money from the  
17 Harm Reduction Center?

18 A. No, it was from a new job.

19 Q. From the new job?

20 MR. BEVAN: May I have a moment, Your Honor?

21 BY MR. BEVAN:

22 Q. Couple more questions, Mr. Watts. I'll be done.

23 You know Bob Martin?

24 A. Yes, I do.

25 Q. He is a friend of yours?

1212

Watts - Direct / Bevan

1 A. Yes, he is.

2 Q. And there came a point where Bob Martin assisted you in the  
3 club; is that correct?

4 A. Yes.

5 Q. Okay.

6 And he got involved because Ken Hayes took off for  
7 Canada; isn't that correct?

8 A. Yes, I believe.

9 Q. Okay.

10 And he left you holding the bag, as they say?

11 A. He owed me a lot of money.

12 Q. Okay.

13 And he took off for Canada when?

14 A. Before the job was done.

15 Q. What job?

16 A. 6th Street.

17 Q. Okay.

18 Do you recall that he was gone by January 2002?

19 A. Not sure of the dates.

20 Q. Did you continue to remain in communication with Ken Hayes  
21 in Canada?

22 A. On and off.

23 Q. Okay.

24 You talked to him by phone?

25 A. Usually, I'd hear that he had called. I would get a note

1213

Watts - Direct / Bevan

1 or something.

2 Q. Sorry?

3 A. Usually, I would hear that he had called.

4 Q. He would call?

5 A. Yeah.

6 Q. And was he continuing to spend money of the Harm Reduction  
7 Center even though he was in Canada?

8 A. Probably. I couldn't tell you.

9 Q. Do you know if he was using a credit card?

10 A. I have no idea.

11 Q. Okay.

12 But Bob Martin came in and helped you out; isn't  
13 that correct?

14 A. Bob's business is money. I mean --

15 Q. Okay.

16 A. That's what Bob does.

17 Q. Okay.

18 And did you open a new bank account and put him on  
19 the bank account?

20 A. Yeah, I'm pretty sure we did.

21 Q. And that was to help resolve some of the bills; is that  
22 correct?

23 A. I was hoping to get paid back at some point.

24 Q. Do you know that he was -- one of the persons he talked to  
25 was Mr. Rosenthal to settle up on what Mr. Rosenthal said was

1214

Watts - Direct / Bevan

1 owing to him for plants?

2 A. George, you got to understand something. The social circle  
3 that was going on there, I didn't have the time to pay  
4 attention to it.

5 Q. Okay.

6 What do you mean social circle?

7 A. Whatever was going on.

8 Q. Okay.

9                   The struggle for control of the club?

10 A. Not -- it wasn't that. There wasn't any --

11 Q. Okay.

12                   Do I understand you're a volunteer fireman?

13 A. Yes, I am.

14 Q. Where would that be?

15 A. Muir Beach, California.

16 Q. And how long have you been there?

17 A. Since I broke my back. I don't do it anymore.

18 Q. But for years you have been a volunteer fireman?

19 A. Yes, sir.

20 Q. And for how long, approximately?

21 A. Since I was about 16.

22 Q. Um-hum.

23                   And you continue to do that?

24 A. Not since I broke my back.

25 Q. Okay.

1215

Watts - Cross / Ampar&aacute;n

1 A. I'll do medical, if I have to.

2 Q. Okay.

3                   All right, Mr. Watts, thank you.

4                   THE COURT: Cross?

5                   CROSS-EXAMINATION

6                   MR. AMPAR&Aacute;N: Before I begin, would you like a  
glass

7 of water? Are you okay?

8                   THE WITNESS: I'll take it.

9 BY MR. AMPAR&Aacute;N:

10 Q. Good afternoon, Mr. Watts.

11                   I'm just going to ask you a couple of questions.

12 A. Make it short.

13 (Laughter.)

14 THE WITNESS: Been sitting here a long time.

15 BY MR. AMPAR&Aacute;N:

16 Q. Is it fair to say that at the time Ken Hayes left the Harm  
17 Reduction Center and fled to Canada that the Harm Reduction  
18 Center was experiencing financial difficulties?

19 A. The Harm Reduction Center never had any money, never.

20 Q. Okay.

21 So money was a problem?

22 A. Money is a problem.

23 Q. And Mr. Hayes, having fled to Canada, that void or the  
24 vacuum that was created by his leaving caused additional  
25 problems?

1216

Watts - Cross / Ampar&aacute;n

1 A. Everybody seemed pretty happy, actually.

2 Q. Oh, really?

3 A. Yeah. I mean, I paid attention, you know, if someone  
4 really complained, but otherwise, you know.

5 Q. Okay.

6 The -- you were a signer on a checking account  
7 because you needed to be able to purchase items to build out  
8 the space?

9 A. No, it was because Ken wouldn't show up is, basically, why  
10 I signed them.

11 Q. Okay.

12 If Ken was at the Harm Reduction Center, it was  
13 Ken's job to sign the checks, correct?

14 A. That's correct.

15 Q. You only signed them as a last resort?  
16 A. That's correct.  
17 Q. When no one else was around that could sign them; is that  
18 fair?  
19 A. Yes.  
20 Q. When Ken took off to Canada, it meant you were the only one  
21 around, correct?  
22 A. No, there were plenty of people around.  
23 Q. You were the only one around who could sign the checks?  
24 A. That's -- I'm not good with money, so that's why Bob --  
25 Q. Bob Martin stepped in to handle the money?

1217

Watts - Cross / Ampar&aacute;n

1 A. Yeah.  
2 Q. And I believe you said Bob Martin's business is money?  
3 A. Well, he deals with it a lot better than I do.  
4 Q. Okay.  
5 A. I cannot even afford to get here today.  
6 Q. Is that because the Government took your truck?  
7 A. Took everything I owned. And I was -- they somehow find a  
8 checkbook in my truck, but they can't give me my tools back.  
9 Q. You said something about a broken back. When did you break  
10 your back?  
11 A. I broke my back in a car accident when I was told I was  
12 going to spend 20 years to life in jail. And I went out and  
13 got drunk.  
14 Q. Prior to your breaking your back, is it fair to say that  
15 you had other injuries that caused you significant pain?  
16 A. I have something called Ryder's Syndrome, it's like  
17 arthritis.  
18 Q. And is it fair to say that as a result of the arthritis and

19 as a result of the injuries you sustained and broke your back,  
20 you were prescribed pain kills -- pain kills -- pain  
21 medication?

22 A. Yes.

23 Q. And that over a period of time you became dependent upon  
24 that medication because of the pain you were experiencing?

25 A. That's correct.

1218

Watts - Cross / Ampar&aacute;n

1 Q. And those medications affect your ability to recall over,  
2 you know, they affect your ability to store things into your  
3 memory and they affect your ability to recall things like five  
4 years, four months later; is that fair?

5 A. I am not a doctor. I can't answer that.

6 Q. Okay.

7 As a result of your arrest in relation to these  
8 matters, you pled guilty to failing to file your tax papers  
9 with the IRS, I think you said it was the year that your  
10 documents burned or the year that the --

11 A. It was funny because April 15th, I drove up to the Harm  
12 Reduction Center and I saw fire trucks, and I was supposed to  
13 be picking up money and things like that.

14 Q. And the entry of your plea to the tax charge resolved the  
15 entire case related to any claims of your involvement with  
16 marijuana, correct?

17 A. I don't understand.

18 Q. When you pled to the tax charge, you didn't plead to any  
19 marijuana-related offense?

20 A. Marijuana is legal in the state, I believe, but not  
21 federally.

22 Q. Okay.

23 As a result of that conviction you were assessed  
24 certain fees and fines, correct?

25 A. That's correct.

1219

Watts - Cross / Ampar&aacute;n

1 Q. And Mr. Martin paid those fees and fines?

2 A. I was owed the money, so --

3 Q. But Mr. Martin paid the fees and fines?

4 A. Yes.

5 Q. And Mr. Martin also brought you down here to have a  
6 meeting, and you and Mr. -- you and Mr. Martin had a meeting  
7 where Mr. Bevan showed up, correct?

8 A. Yeah. With George, yes.

9 Q. And when you say George, you are referring to the U.S.  
10 Attorney?

11 A. Yes, sir.

12 Q. And it was Bob Martin that set that up?

13 A. It was --

14 Q. It was Bob Martin that set up your coming in?

15 A. I had to take money that I owed him.

16 Q. And you needed Bob Martin for the money?

17 A. Yes.

18 Q. Did Bob Martin tell you you were going to be meeting with  
19 Mr. Bevan?

20 A. Yes.

21 Q. Is it fair to say that Ed Rosenthal was not a signator, did  
22 not have signature power on any Harm Reduction Center bank  
23 accounts?

24 A. Not that I know.

25 Q. Is it fair to say that Mr. Rosenthal has never appeared on

Watts - Cross / Ampar&acute;n

1 any lease for a premises related to the Harm Reduction Center?

2 A. Before I got arrested, the only time I saw Mr. Rosenthal  
3 was walking across -- walking through the job a couple of times  
4 before I was arrested and met him. And -- in custody up here.

5 Q. That was the extent of your knowledge of Mr. Rosenthal in  
6 February of 2002?

7 A. That's correct.

8 Q. If I was to go back over each of the checks that Mr. Bevan  
9 went over with you, one after the other --

10 A. I'd have no idea. I can see where you are going. I  
11 wouldn't remember.

12 Q. Is it fair to say that many of those checks you merely  
13 signed and somebody else handed them to you already filled out?

14 A. Usually there was a little communication but that's  
15 basically what it was.

16 Q. And when you signed those checks did you ask, for example,  
17 if there was something in a memo of a check that said Bart, or  
18 Pineapple or Egg Man, did you take the time to inquire as to  
19 whether or not -- what --

20 A. No.

21 Q. -- that was?

22 A. No.

23 Q. Was it your job?

24 A. It wasn't my job. Believe me.

25 Q. Was it your responsibility to maintain inventory?

Watts - Cross / Ampar&acute;n

1 A. No.

2 Q. Was it your responsibility to --

3 A. Inventory of building supplies.

4 Q. Okay. But --

5 A. But no other inventory.

6 Q. Okay.

7 Was it your responsibility to tend to the grow?

8 A. No, that's the patient's responsibilities.

9 Q. Wasn't your responsibility to schedule volunteer shifts?

10 A. Just for construction.

11 Q. And you testified about Bob Martin. Do you recall when  
12 Mr. Martin started at the Harm Reduction Center?

13 A. Probably not soon enough. No, I don't recall a date.

14 Q. Do you know when he began running it?

15 A. He -- the patients ran the club. You have to understand  
16 that was the design of patients co-op. 350 Divisidero failed  
17 after I went to jail, but that was the design of the clubs.

18 Q. And I believe that you said that in relation to the plea  
19 agreement that Mr. Bevan asked you about that you said that you  
20 did so because you were facing ten to life?

21 A. I was told I was going to spend 20 years to life.

22 Q. Twenty years to life, I'm sorry.

23 And as a result of that plea agreement, you didn't  
24 have to go into custody?

25 A. As a result of my accident, the time frame of charging me

1222

Watts - Cross / Ampar&acute;n

1 ran out.

2 I believe George was ill, also.

3 MR. BEVAN: I didn't hear what you said.

4 THE WITNESS: I believe that you were ill also. You  
5 had some sort of medical problem.

6 MR. AMPAR&Aacute;N: Oh, ill.

7 THE WITNESS: Yes.

8 BY MR. AMPAR&Aacute;N:

9 Q. Is it fair to say, Mr. Watts, that to your understanding or  
10 the information you had that Mr. Rosenthal had no proprietary  
11 or ownership interest in the Harm Reduction Center?

12 A. Not that I know of.

13 Q. And you said that at some point you left your work at the  
14 Harm Reduction Center on 6th Street and moved to a new building  
15 site on 10th Street?

16 A. Yes.

17 Q. And is it fair to say that that was Bob Martin's  
18 dispensary?

19 A. Yes, I believe.

20 Q. And is that why you maintained -- you continued to incur  
21 building expenses and continued to be in possession of the Harm  
22 Reduction Center checkbook?

23 A. No.

24 Q. No?

25 A. I don't even know what you mean.

1223

Watts - Cross / Ampar&aacute;n

1 MR. AMPAR&Aacute;N: 75B, is that still up there?

2 BY MR. AMPAR&Aacute;N:

3 Q. I'm going to show you 75B, a letter that Mr. Bevan asked  
4 you about.

5 Mr. Bevan asked you if it would surprise you if they  
6 found -- if you were told that they found that letter on a  
7 computer at your home.

8 A. Yes, I took the computer when I was basically done with the  
9 job at 6th Street.

10 Q. So is it your testimony that there was a computer at 6th  
11 Street that you took to your home?

12 A. There were lots of computers at 6th Street.

13 Q. Was there at least one that you took to your home?

14 A. Yes, I did.

15 Q. Okay.

16 The fact that that computer was found in your home,  
17 does that change your testimony as to whether or not you wrote  
18 that letter?

19 A. I wasn't very good on a computer at that time.

20 Q. Does that letter contain language or words that you would  
21 use?

22 A. This is basically done by the patients.

23 Q. I'm asking -- but in terms of content of the letter, in  
24 terms of the actual words and vocabulary and phrasing, does  
25 that sound like something you would write?

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Watts - Cross / Ampar&aacute;n

1 A. I wouldn't even know this address here of Mr. Rosenthal. I  
2 just noticed was on this letter.

3 Q. Okay.

4 And you said that letter was never even sent to  
5 Mr. Rosenthal?

6 A. No, it wasn't.

7 Q. When you left the Harm Reduction Center on 6th Street and  
8 went to Bob Martin's club that he was opening up on 10th  
9 Street, how long did it take you to build out that club?

10 A. I got arrested before it was done.

11 Q. So you didn't finish that job?

12 A. No.

13 Q. Okay.

14 And other than the 10th Street job -- is it fair to  
15 say that you at least started or began the construction build  
16 out?

17 A. Yes.

18 Q. Okay.

19 And other than the 10th Street, did you also assist  
20 Bob Martin in building out any of his other grows or  
21 dispensaries?

22 A. No.

23 Q. Did the Harm Reduction Center sell books that were authored  
24 and published by Ed Rosenthal?

25 A. They had books, yes. I don't -- I don't know which ones.

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Watts - Cross / Ampar&aacute;n

1 Q. But there was a section?

2 A. I remember, I know one by Jack Herr (phonetic).

3 Q. And is it fair to say that at the time you were doing  
4 construction at these clubs that you were smoking marijuana on  
5 a daily basis?

6 A. Yes.

7 Q. Is it fair to say that Mr. Rosenthal never had a key to the  
8 Harm Reduction Center?

9 A. I wouldn't think so.

10 Q. Is it fair to say Mr. Rosenthal had no authority to do  
11 anything at Harm Reduction Center?

12 A. Not unless he was involved with the patients.

13 Q. Have you ever been to 1419 Mandela Parkway in Oakland,  
14 California?

15 A. No, I haven't. No.

16 Q. Mr. Watts, Mr. Bevan, the U.S. Attorney, asked you if you

17 were happy about being here and you said that you weren't here  
18 voluntarily. You are not here happy, in fact, you were brought  
19 here, against your will.

20 A. That's correct.

21 MR. AMPAR&Aacute;N: If I can just have one moment, Your  
22 Honor.

23 THE COURT: Ladies and gentlemen, Counsel asked  
24 whether the witness was brought here against his will, and he  
25 said yes. And, in fact, I think the jury should then know that  
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Watts - Cross / Ampar&aacute;n

1 I directed that he be brought here.

2 He was to have appeared this morning. He failed to  
3 appear this morning. And so it was an order of the Court, not  
4 the Government, that brought him here. And I think you should  
5 know that in light of the question that was asked.

6 Go ahead.

7 BY MR. AMPAR&Aacute;N:

8 Q. Mr. Watts, were you involved in the sale of marijuana from  
9 the Harm Reduction Center to an undercover agent outside of the  
10 Harm Reduction Center?

11 A. No, I wasn't a bud tender. I was not a bud tender.

12 Q. Did you ever sell any plants or marijuana products offsite  
13 from a dispensary?

14 A. No.

15 Q. And -- hold on, sorry.

16 Mr. Watts, you were convicted in 2003 of a felony  
17 crack cocaine possession charge in Redwood City?

18 A. It wasn't crack cocaine. It was for pills that I got from  
19 the informant from the DEA.

20 Q. I'm sorry?

21 A. It was pills that I got from the DEA informant.

22 Q. You were convicted of pills that you were given by the  
23 confidential source that came in with the DEA agent?

24 A. One --

25 THE COURT: Well, none of this evidence is --

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Watts - Cross / Ampar&aacute;n

1 MR. AMPAR&Aacute;N: I'm sorry, that's fine.

2 THE COURT: The jury will disregard the  
3 circumstances of the conviction.

4 MR. AMPAR&Aacute;N: No further questions.

5 MR. BEVAN: I don't have anything further,  
6 Mr. Watts.

7 THE COURT: Okay. You are excused, Mr. Watts.

8 Ladies and gentlemen, we are going to take our  
9 recess now until five after 3:00.

10 Remember the admonitions given to you; don't discuss  
11 the case with anyone, allow anyone to discuss it with you, form  
12 or express any opinion.

13 (Jury out at 2:45 p.m.)

14 THE COURT: Okay, the jury has retired.

15 So where are we?

16 MR. BEVAN: We have some exhibits to offer, Your  
17 Honor, but then we have no further witnesses subject to Your  
18 Honor's ruling with respect to the other witnesses.

19 THE COURT: Okay. So turning to the defense, who do  
20 you intend to call?

21 MR. AMPAR&Aacute;N: We have just been conferring, and I  
22 think based upon what has happened today and based upon the  
23 Court's ruling at the conclusion of yesterday's session, I

24 believe that we are going to rest.

25 THE COURT: Well, wait a minute. When you say based 1228

Watts - Cross / Ampar&aacute;n

1 upon the Court's ruling at the end of yesterday, what ruling  
2 did I make?

3 MR. AMPAR&Aacute;N: About what witnesses we could call  
and

4 what they would be allowed to testify to.

5 THE COURT: First of all -- well, I made certain  
6 rulings with respect to witnesses at the beginning of the  
7 trial. Other than that, I haven't, though, I don't know, I can  
8 take a look, at the individual -- there are some that I  
9 restated that I wouldn't permit you to call. But as to some  
10 witnesses, there is -- they may be able, who you have  
11 identified and made an offer of proof, they do have some  
12 relevant information. I'm not precluding you.

13 You give the impression that I am precluding you  
14 from calling witnesses. I'm not precluding you from calling  
15 Jane Klein. I'm not precluding you from calling any number of  
16 people that you have listed that I have indicated.

17 MR. AMPAR&Aacute;N: No, what I'm saying is that you  
have  
18 either precluded or so limited areas of testimony that we would  
19 want them to present that we would look foolish in trying to  
20 present them as a defense.

21 THE COURT: Well, I don't know whether you would  
22 look foolish or not. That is not --

23 MR. AMPAR&Aacute;N: In any event --

24 THE COURT: Well, wait a minute. No. No. I want a  
25 record on this. I want a record that I'm not precluding you.

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1           There is -- you have offered Jane Klein. You have  
2 offered a two-page offer of proof on Jane Klein. A lot of it  
3 is relevant and would be admissible.

4           I'm going to hand a copy of your offer of proof to  
5 the Government for them to review and hear their views as to  
6 whether or not this person would give relevant testimony. The  
7 Government may agree that some of it is relevant. They may  
8 disagree, and so forth. But evidence in connection with -- all  
9 sorts of things we discussed, money orders, the cash business,  
10 the books sales, the -- there are any number of things that you  
11 have identified which I would permit you to introduce evidence  
12 on.

13           Now, you say, well, if you did, you would look  
14 foolish. I don't know whether you would look foolish or not,  
15 but I don't want to leave the record, in the event that there  
16 is a conviction, with some view that the Court is precluding  
17 you from putting in a lot of what you have in your offer of  
18 proof.

19           That is as to Jane Klein. There are other witnesses  
20 as well that I might permit.

21           MR. AMPAR&acute;N: May I respond?

22           THE COURT: Yeah, but you can respond if I'm allowed  
23 at least to put on the record, what I -- my perception of what  
24 I have allowed you to do.

25           Now, you think that what I have allowed you to do

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1 would only make you look foolish. That is a view that you can  
2 have, but it's not the view of the Court.

3 Do you want to think about whether or not you want  
4 to --

5 MR. AMPAR&Aacute;N: No, I don't want to interrupt the  
6 Court. And every time I go to respond to the Court, I don't  
7 want to make it look like I'm arguing with the Court.

8 THE COURT: Go ahead.

9 MR. AMPAR&Aacute;N: The issues that we want to address  
are  
10 issues that the Court have primarily excluded. And based upon  
11 that, we are deciding to rely upon the state of the evidence  
12 and attack the fact that the Government has failed to meet its  
13 burden of proof.

14 We tendered that offer of proof to the Court at the  
15 Court's request. It was an ex parte request, and we would  
16 object to the Court turning it over to the U.S. Attorney.

17 THE COURT: Well, if, in fact, you take the position  
18 that you are not going to -- you are not -- the Government  
19 essentially has rested. Now, it's your turn.

20 MR. AMPAR&Aacute;N: And we've rested.

21 THE COURT: You haven't rested until you're rested  
22 in front of the jury.

23 But I don't want you to rest, if, in fact, you have  
24 an impression or a belief that I'm not allowing certain  
25 witnesses to testify. As to some witnesses, I have already

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Watts - Cross / Ampar&aacute;n

1 ruled. As to Jane Klein, No. 1, I would permit her to testify.

2 No. 2, there are pages of her testimony -- of the  
3 offer of proof which I would permit into evidence.

4 Now, do you want to go through it so you could see  
5 which I would permit and which I would not permit? Do you want

6 me to do that or not?

7 MR. AMPAR&Aacute;N: Your Honor, the issue is for the  
8 defense upon review of what the Court said and upon review of  
9 what we would anticipate to offer as testimony, that it would  
10 come into conflict and we would have a battle with the Court  
11 with a witness present in front of the jury.

12 THE COURT: No, you wouldn't. Why do you say things  
13 like that? I'm offering you the opportunity, Mr. Ampar&aacute;n,  
14 right now, if you want to call Jane Klein as a witness, I will  
15 be pleased to go through your proffer and indicate to you what  
16 I would permit and what I would not permit. That is as to  
17 Jane Klein.

18 As to other witnesses, I will do the same thing. I  
19 do not want you to be able to make an argument to the Court of  
20 Appeals, in the event that this is a conviction, that the  
21 evidence is that you were not permitted to present a defense.  
22 There are certain things I've said you are not permitted to  
23 present, but there are other things that you are permitted to  
24 present.

25 You are permitted to present impeaching evidence of

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1 these witnesses who have testified for the Government. I would  
2 permit you to do so.

3 Now, do you want to go through item by item or do  
4 you want to withdraw these witnesses? But don't say you are  
5 withdrawing these witnesses because I've ruled you can't call  
6 these witnesses because that's not accurate.

7 MR. AMPAR&Aacute;N: We would -- as to the witnesses the  
8 Court has ruled can't testify, the record speaks for itself.

9 THE COURT: Okay. Then I have a new suggestion

10 because I think that we are not --

11 MR. AMPAR&Aacute;N: Let me finish.

12 THE COURT: No, we are not talking at cross  
13 purposes. You are permitted now to make an offer of proof as  
14 to any witness you want to call and as to anything that witness  
15 would say. You are now permitted.

16 All previous rulings I'm setting aside subject to  
17 your presenting any argument you want as to why a particular  
18 defense witness should testify. I don't want a record that you  
19 are going to argue to the Court of Appeals I precluded.

20 What I have precluded essentially is that the  
21 evidence that Mr. Rosenthal was growing or participating in  
22 this operation for the purpose of selling or distributing  
23 marijuana for medical purposes, that that is irrelevant. And  
24 if a witness would get up and testify as to that, I would deem  
25 that testimony to be irrelevant.

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1 As to impeaching any of the Government witnesses who  
2 have testified, the door is wide open as to witnesses that you  
3 may want to call. And if you wish, I will listen to an offer  
4 of proof as to any witness you want to call. You are free to  
5 call any of these people subject to an offer of proof. And I  
6 do not want to hear you say that I've already ruled on the  
7 offer of proof.

8 What I have said, essentially, about the offer of  
9 proof is that I want to listen to what the witnesses say in the  
10 Government's case and then make a determination as to whether  
11 or not the testimony that you're proffering is relevant, is  
12 admissible, is -- meets the criteria for testimony that would

13 be probative for the jury to consider.

14 I said I was reserving judgment. I did, of course,  
15 indicate some tentative views as to a lot of this testimony so  
16 that I wouldn't hear it, if I thought it not to be relevant, in  
17 the opening statement.

18 Nevertheless, we are now at the conclusion of the  
19 Government's case. And you asked me, and I accept, I should  
20 keep an open mind as to this testimony, fine. I now know what  
21 the Government has said their case is, you do as well.

22 So now is your opportunity, you don't have to do it  
23 right now, but you are going to have to do it today. Now is  
24 your opportunity to go through your offer of proof and have me  
25 rule on anything you want to present. Anything at all you want

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1 to present I want you to argue to me in the presence of the  
2 Government and in a public forum as to what you want to  
3 present, because I do not want to see in the Court of Appeals  
4 some argument that I precluded you from bringing in evidence of  
5 subject A or subject B; though I have precluded you from  
6 introducing evidence that the marijuana was grown for medicinal  
7 purpose or distributed for medicinal purposes. That I said at  
8 the outset.

9 MR. AMPAR&acute;N: I think, Your Honor, we have made  
our  
10 decision in terms of a defense and are willing to stand by it.

11 THE COURT: Is your decision not to call any  
12 witnesses?

13 MR. AMPAR&acute;N: Our decision is to rest.

14 THE COURT: And without calling witnesses?

15 MR. AMPAR&acute;N: Without calling witnesses.

16 THE COURT: And if I permit you to introduce all the  
17 things that you wish in your offer of proof, save and except,  
18 save and except for the purpose to which the marijuana was  
19 grown, it is still your decision to rest; is that correct?

20 MR. AMPAR&Aacute;N: Yes.

21 THE COURT: Okay.

22 MR. BEVAN: I would ask, Your Honor, that the --  
23 Mr. Rosenthal be voir dired by the Court --

24 THE COURT: I will.

25 MR. BEVAN: -- to make sure that there has been a

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1 knowing and intelligent decision made not to testify in his own  
2 behalf.

3 THE COURT: I will.

4 Do you want to talk to him first or shall I do it  
5 now?

6 MR. AMPAR&Aacute;N: We can do it now.

7 THE COURT: Okay.

8 Mr. Rosenthal, you have obviously heard your  
9 counsel's decision that he does not wish to call any witnesses.

10 THE DEFENDANT: My problem with this case, Your  
11 Honor, is that I believe that the prosecutor is acting more  
12 like a judge and you are acting more like a prosecutor.

13 I would like to bring my case. My case is that this  
14 is selective prosecution, that this was done because of  
15 political reasons, and that I am being selected out because of  
16 my advocacy, whereas somebody like Bob Martin, who cooperates  
17 with the Government in going after marijuana users, marijuana  
18 producers, and other marijuana suppliers, is given a privilege  
19 thing.

20 I would like to continue the case with the witnesses  
21 that we have already announced that we would like to have. And  
22 since you have precluded those witnesses, which is the main  
23 part of the case, from testifying, there is no reason for  
24 anybody to testify.

25 Thank you.

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1 (Witness returns to counsel table.)

2 THE COURT: Mr. Rosenthal, stay there, please.

3 Now, you say that I have a precluded the witnesses.  
4 If I permit those witnesses to come forward, do you want them  
5 called?

6 THE DEFENDANT: I would like the witnesses that my  
7 attorneys have asked to testify before the jury, not before  
8 you.

9 THE COURT: Okay. And do you want --

10 THE DEFENDANT: For the body of the case. And the  
11 body of the case is that this is selective prosecution. And  
12 that -- and that I have been selected out because of that, and  
13 also that the Government actually has been in a Rico -- and we  
14 would like to call Mr. Bevan as well, that the Government has  
15 actually been in a Rico situation with Bob Martin.

16 And we have been precluded from tendering our theory  
17 of the case.

18 THE COURT: Mr. Rosenthal, do you want to testify in  
19 your case?

20 THE DEFENDANT: No, I would like to bring the  
21 witnesses that we would like to testify in that case because I  
22 would be precluded from testifying. You would stop me, just as

23 you have done to every other witness when it hasn't -- when it  
24 hasn't been in the Government's interest.

25 THE COURT: Okay.

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1 THE DEFENDANT: I believe that you are prejudiced.  
2 I believe that you should step down. And I believe that this  
3 is a mistrial.

4 Thank you.

5 (Witness returns to counsel table.)

6 THE COURT: Mr. Rosenthal, please stay there.

7 THE DEFENDANT: I would rather not.

8 THE COURT: No, Mr. Rosenthal, I need to ask you a  
9 question. If I permit you to testify --

10 THE DEFENDANT: No. I want my witnesses. I have a  
11 perfect right to testify, I understand that. I want my  
12 witnesses to testify.

13 THE COURT: Counsel --

14 THE DEFENDANT: If you are not going to give me my  
15 witnesses, I'm not putting on a case.

16 THE COURT: Okay.

17 Now, Mr. Rosenthal, if I allow you to testify and  
18 say whatever you want to say without any limitation, without  
19 any -- freely, that is to say, you may say anything you want to  
20 in your defense on the stand, do you wish to do so?

21 THE DEFENDANT: Only if I can bring corroborating  
22 witnesses.

23 THE COURT: Okay, then I would like your counsel --  
24 I would like you to spend a moment with your counsel --

25 THE DEFENDANT: I would need a day to think about

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1 it, Your Honor. I can't think about this. I can't give you an  
2 answer right now because I need 24 hours to think about it.

3 MR. AMPAR&acute;N: May I propose witnesses to the  
Court

4 to see what the Court's reaction would be?

5 THE COURT: Any witnesses that you --

6 MR. AMPAR&acute;N: Supervisor Nate Miley.

7 THE COURT: Any witness -- then I need to know what  
8 Mr. --

9 THE DEFENDANT: Mr. Miley is -- I'll tell you what  
10 Mr. Miley is going to say. He is going to say that I was an  
11 officer of the City, and I was allowed by the City to grow  
12 marijuana and to provide it to patients, and also that I was  
13 told by the City Attorney that I was free from prosecution.

14 MR. AMPAR&acute;N: We would also call Barbara Parker,  
15 City Attorney for the City of Oakland, who would testify that  
16 Mr. Rosenthal was advised that as a deputy of the City of  
17 Oakland, he would be shielded from things like Mr. Bevan and  
18 his prosecution in Federal Court.

19 We would also like to call people from the Medical  
20 Marijuana Working Group from Oakland that discussed the issues  
21 about the legalization of medical marijuana, setting up  
22 Oakland -- setting up the policies and procedures that  
23 Mr. Rosenthal was advocating, such as for the employment of  
24 welfare mothers in Oakland for high-paying salaried positions  
25 with benefits and taxing and regulating medical marijuana on a

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1 state and federal level.

2 THE DEFENDANT: We would also like to call DEA Agent

3 Steele (phonetic) who specifically gave Sam permission and said  
4 that they would not be harassed.

5 MR. AMPAR&Aacute;N: We could call the testimony of Joe  
6 DeVries, Nate Miley's assistant. At the time Nate Miley was  
7 the committee chair of the public safety committee of Oakland.  
8 Joe DeVries was his head aide in response to health and safety  
9 legislation and public safety legislation, and that he was with  
10 Mr. Rosenthal, that he went to the Mandela Parkway grow site,  
11 and that everything that was done was conducted properly and  
12 under the auspices of Prop -- the medical marijuana law and the  
13 Oakland ordinance that was drafted and passed in open session  
14 authorizing Mr. Rosenthal to conduct --

15 THE DEFENDANT: We would also like to call Mr. Bevan  
16 to show that he was in a Rico kind of arrangement with  
17 Bob Martin and was actually violating federal law when he was  
18 doing that.

19 THE COURT: So your offer of proof -- well, let's --

20 THE DEFENDANT: Our offer of proof will be without a  
21 proffer.

22 THE COURT: So, Mr. Rosenthal, let's -- let me ask  
23 this question: If I don't permit these individuals just  
24 identified by your attorney to testify on the subjects that  
25 your attorney has indicated that he wants those people to

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1 testify, but would permit you to testify about any of those  
2 subjects and anything you want to say, do you or do you not  
3 want to testify?

4 THE DEFENDANT: Well, if I mention somebody like  
5 Nate Miley, can I get Nate Miley here to corroborate that what  
6 I said is correct?

7 THE COURT: The answer is I don't know. I need to  
8 know --

9 THE DEFENDANT: Well, I need to know.

10 THE COURT: Oh.

11 THE DEFENDANT: I can't -- I can't -- if you are not  
12 going to make a decision, then I can't make a decision.

13 THE COURT: I've made a decision. Do you want to  
14 hear the decision?

15 THE DEFENDANT: Yes.

16 THE COURT: You can testify about anything you want  
17 to testify without --

18 THE DEFENDANT: Can Mr. Miley testify?

19 THE COURT: Why don't you listen to me.

20 -- without any restriction at all. This is your  
21 defense, and whether or not it's legally admissible is not of  
22 concern. You may testify to anything you wish.

23 Now, that is what you can do. With respect to  
24 witnesses, other witnesses, other than yourself, the Court  
25 would rule as follows: As to those individuals that were just

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1 recited by your counsel, and as to the testimony those people  
2 would give, that is inadmissible.

3 It's inadmissible because the Ninth Circuit Court of  
4 Appeals affirmed the orders of the Court, which in the first  
5 case ruled it to be inadmissible, and it's now the law of the  
6 case.

7 As to the other items of testimony that was  
8 contained in the proffer of proof, that was filed by your  
9 counsel at the beginning of the trial, much of that would be

10 admissible, if, in fact, you want to call those individuals.

11 So that is what the situation is.

12 THE DEFENDANT: Well, I would like to know whether I  
13 could call Mr. Bevan?

14 THE COURT: Okay. That would depend, of course, on  
15 what Mr. Bevan would say and whether or not it would be  
16 relevant to the determination.

17 THE DEFENDANT: Don't you think that it would be  
18 better for us not to warn Mr. Bevan of what we would be asking  
19 him?

20 THE COURT: Fine.

21 THE DEFENDANT: So we would like to call him in  
22 front of the jury and then see what happens.

23 THE COURT: You are entitled to make an offer of  
24 proof outside of Mr. Bevan's presence as to what he would  
25 testify to and why it would be relevant to this determination.

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1 And I would listen to that.

2 THE DEFENDANT: Well --

3 THE COURT: If that is what you want to do.

4 THE DEFENDANT: Unless we say -- unless I firmly  
5 know who I can actually have as a witness, I'm not going to  
6 play in this kangaroo charade court, which is exactly what this  
7 is, because you are just not letting the full story out. And  
8 if you are not letting the full story out, it's not worth  
9 doing.

10 It's just like a Soviet Stalinist trial of comrades,  
11 you know? Why don't you just call me Comrade and then send me  
12 off to hang? Because that's basically what you are doing, in  
13 terms of letting the Government full sway and not allowing us

14 to present any kind of evidence that we want.

15 We have a right to our theory of the case. And if  
16 you don't like the theory of the case, you are not the judge of  
17 this. The jury should be the judge of it, what the theory of  
18 the case is.

19 Just because -- just because the Government has said  
20 that it doesn't want me to present that theory of the case,  
21 doesn't mean that I don't have a right to present any theory of  
22 the case that I want.

23 I do have that right. And you are not allowing me  
24 that right. You are not allowing me the witnesses that I have  
25 that would prove my case. And you are allowing somebody who

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1 has been -- where is he -- here he is -- who has been involved  
2 in a Rico conspiracy for the past four years to just go with  
3 his smile and smirks and all of this, nasty -- his nasty  
4 expressions, go to the jury without admonishing him for it.

5 It just shows -- it shows what kind of court this  
6 is. My participation in it, I want to limit it because I know  
7 that you are -- I believe that you, by your previous actions,  
8 are working with the prosecutor hand in hand.

9 THE COURT: Okay. Well, the decision you have to  
10 make is whether or not you wish to testify.

11 THE DEFENDANT: Well, I'm saying if I testify I  
12 would want corroborating witnesses. If you are not going to  
13 allow me the corroborating witnesses, then there is no sense in  
14 me testifying.

15 THE COURT: That's up to you.

16 THE DEFENDANT: But I would like 24 hours to think

17 about it before I give you my final opinion.

18 THE COURT: Okay. So fine. So, please -- we will  
19 convene tomorrow. Tomorrow is Wednesday, right?

20 MR. AMPAR&Aacute;N: Right.

21 THE COURT: We'll convene tomorrow at 8:00 a.m.

22 THE DEFENDANT: I would like 24 hours.

23 THE COURT: No, I'm sorry. I've got a jury here.

24 THE DEFENDANT: Why don't we do it Thursday morning?

25 THE COURT: Mr. Rosenthal --

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1 THE DEFENDANT: Let's do it Thursday morning instead  
2 of tomorrow morning so that we can argue this out.

3 THE COURT: Fine, Mr. Rosenthal, but I'm going to  
4 set it for tomorrow morning. I'm going to adjourn for the day,  
5 take in whatever -- the Government rests, I'm going to adjourn,  
6 and then I want to deal with it tomorrow. That is when I would  
7 like to deal with it.

8 MR. AMPAR&Aacute;N: Is it possible to do 8:30 rather  
than  
9 8:00 a.m.?

10 THE COURT: Well, no, because I have the jury coming  
11 in at 8:30. So if there's going to be testimony, I want -- the  
12 problem is I have, of course, the jury coming in. They may  
13 have to turn around and leave, but that is the way life is.  
14 But that is my problem, that is not your problem.

15 At any rate, I want to do it at 8:00 o'clock in the  
16 morning. You have this afternoon. You have this evening to  
17 decide whether or not you want to call any witnesses, all  
18 right, and what these witnesses would say.

19 Once again, I'm telling you I will go through the

20 offers of proof that have been submitted by the defense in this  
21 case and line by line indicate what I would permit and what I  
22 wouldn't permit.

23 THE DEFENDANT: You're --

24 THE COURT: As to that which I wouldn't permit, I  
25 will be pleased to give reasons why I'm not permitting it.

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Watts - Cross / Ampar&acute;n

1 THE DEFENDANT: Your Honor, we can settle this right  
2 now. If you are going to let me present my theory of the case  
3 along with the witnesses that I want for my theory of the case,  
4 that it's a selective prosecution, that it's a prosecution  
5 because of political reasons, and that there is a Rico thing  
6 involved with the very Government -- with the Government  
7 officer and Bob Martin, if I'm not allowed to present those and  
8 allowed to present the witnesses that I choose to present them  
9 in the way that I choose to present them, we cannot go on with  
10 this. We will just to have continue with a kangaroo court.

11 THE COURT: Mr. Ampar&acute;n, please advise me  
tomorrow  
12 morning at 8:00 o'clock as to how you wish to proceed, and also  
13 if, in fact, you have any authority for the proposition -- any  
14 legal authority at all, for the proposition that the questions  
15 of selective prosecution, of governmental misconduct of the  
16 type that Mr. Rosenthal believes occurred would be admissible  
17 as a jury determination, please provide me with that  
18 information because I know of no such case.

19 MR. AMPAR&Aacute;N: The Court has already received our  
20 papers which lay out all of those matters. The Court has  
21 already denied all of our motions.

22 THE COURT: Then I'm asking you once again,

23 Mr. Ampar&aacute;n, just to give me the authority for the  
proposition

24 that this is a jury determination, that the jury has the right  
25 to make some determination as to whether there has been a

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Watts - Cross / Ampar&aacute;n

1 selective prosecution.

2 THE DEFENDANT: I thought we were talking about the  
3 whole truth. Doesn't that have something to do with it? Not  
4 part of the truth, not a little bit of the truth, not  
5 80 percent of the truth, not 90 percent of the truth, but when  
6 a juror -- when a witness goes up there they say the whole  
7 truth. But you have been precluding the whole truth. You  
8 won't even let us have a witness up there.

9 MR. AMPAR&Aacute;N: We'll be here at 8:00 a.m.

10 THE COURT: Great. Okay. Let's bring the jury back  
11 in.

12 Sorry, Sahar, is it okay if we don't have a break?

13 THE REPORTER: No problem, Judge.

14 MR. BEVAN: Do you want the Government to offer the  
15 remaining exhibits and then rest today in front of the jury?

16 THE COURT: Yeah, I think that is a good idea,  
17 subject to those other witnesses.

18 MR. BEVAN: Right.

19 THE COURT: Yeah. I want to get going.

20 (Jury in at 3:10 p.m.)

21 THE COURT: Okay. Let the record reflect all jurors  
22 are present.

23 You have some exhibits.

24 MR. BEVAN: Yes, Your Honor, I would offer Exhibit  
25 110, which are telephone records, pertaining to Kenneth Hayes,

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Watts - Cross / Ampar&acute;n

1 275 King Road, Petaluma, California. Telephone number  
2 (707)789-9415. And that's pursuant to a stipulation with the  
3 defense as to the authenticity of these records.

4 THE COURT: What exhibit is it?

5 MR. BEVAN: 110, it's an add-on perhaps to your  
6 list, Your Honor.

7 THE COURT: Admitted without objection.

8 (Plaintiff's Exhibit 110 was received in  
9 evidence.)

10 MR. BEVAN: Then there were some money orders  
11 payable to First USA Bank, which are payments on a credit card,  
12 postal money orders, Exhibit 43B, pursuant to the same  
13 stipulation with counsel.

14 THE COURT: 43B?

15 MR. BEVAN: Yes, Your Honor.

16 THE COURT: Admitted without objection.

17 (Plaintiff's Exhibit 43B was received in  
18 evidence.)

19 MR. BEVAN: And then there are summaries of the  
20 telephone records that are in evidence prepared by Patty Harai,  
21 H-i-r-a-i, (sic), Exhibit 91.

22 I notice that these particular copies have been  
23 three-hole punched.

24 I would offer these in evidence, Your Honor, as  
25 Exhibit 91 with the understanding that we are going to

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Watts - Cross / Ampar&acute;n

1 substitute ones where there is no three holes punched.

2 THE COURT: Okay. Admitted without objection.

3 (Plaintiff's Exhibit 91 was received in  
4 evidence.)

5 MR. BEVAN: And subject to checking with the  
6 courtroom deputy, Your Honor, as to all the other exhibits to  
7 make sure that our list matches the Court's list, and subject  
8 to matters that have been discussed, the United States at this  
9 point would rest its case in chief.

10 THE COURT: Okay. So ladies and gentlemen,  
11 essentially, subject to a couple of understandings, the  
12 Government has completed its presentation of the evidence that  
13 they have.

14 And I'm going to take up some matters now outside of  
15 your presence. And let me describe the process from here,  
16 since I thought I could give you some idea.

17 No. 1, I believe, and we have every indication that  
18 you will get the case sometime in the next week. I mean, I  
19 know you'll get the case in the next week. Monday is a  
20 holiday, as I'm sure you are aware. So I don't know whether it  
21 will happen immediately or Tuesday of next week, but it's  
22 probably going to move fairly quickly at this point, which  
23 might mean that you come here and there may or may not be  
24 something for you to do.

25 If there isn't, I'll send you home in the next day 1249

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1 or so, but I have got to work through legal issues with counsel  
2 on both sides in order to figure out where we go from here.

3 So I do want to ask your indulgence in the sense  
4 that I have you coming back here tomorrow. I don't know  
5 exactly how long you will be here tomorrow. We know it's a  
6 half day. My guess is that you can certainly count on leaving

7 by about noon tomorrow. That may be earlier, I don't know yet.  
8 So that will be tomorrow.

9 Thursday, we'll have to see. I'll know tomorrow  
10 what Thursday is going to look like. And Friday, we are not  
11 meeting. And we are not meeting on Monday.

12 So that is sort of the schedule. Those people who  
13 have made plans that, you know, that you are going to be  
14 traveling the week -- the end of the week, June 4th, my belief  
15 is that this case will be given to you well in advance of that  
16 date, so you don't have to be concerned about that.

17 Of course, once the case is given to you, it's  
18 entirely up to you how you deliberate. I have some guidance in  
19 the matter, but I've always traditionally left it open to the  
20 jury themselves to figure out how you want to approach your  
21 task. Every jury has their own approach to the task, and I  
22 have always deferred to juries.

23 So, again, you know the case is not over. There are  
24 many more important components for you to be informed about,  
25 and I will just ask you to remember the admonition given to

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1 you; don't discuss the case with anyone, allow anyone to  
2 discuss it with you, form or express any opinion. Please keep  
3 an open mind. You have a lot of things to hear still. And I  
4 appreciate your seriousness with which you are approaching this  
5 case.

6 So thank you very much. Leave your books in the  
7 room, and I'll see you tomorrow at 8:30.

8 (Jury out at 3:20 p.m.)

9 THE COURT: Okay. Let the record reflect the jurors

10 have retired.

11           The Court received a note from one of the jurors,  
12 and I've made a copy of that note. I'll pass it to each party.  
13 The only thing I have taken off is the identity of the juror.

14           I need to respond to this note, so you may take a  
15 look at it, and I welcome your thoughts.

16           So let's see what we should do.

17           Well, perhaps I should discuss this note because  
18 that may have some bearing on what the defense wants to do in  
19 the case.

20           Essentially, the questions are -- there are seven  
21 questions, the first one, asks how many counts there are  
22 against Mr. Rosenthal, and of course, I'll make that clear in  
23 my instructions.

24           The second, third, fourth, fifth and sixth questions  
25 all relate to medical marijuana.

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Watts - Cross / Ampar&aacute;n

1           And then there is a seventh question. The question  
2 7 is, whether or not there is some process for -- it says,  
3 "Will there come a point where this trial is no longer open to  
4 the public?" The answer to that is no, except the jury  
5 deliberations are carried on in secret. I mean, that is the  
6 answer to that question.

7           I know of no procedure not to have the trial public,  
8 if there is something that people are aware of. So one and  
9 seven are easy to answer.

10           Questions 2 to 6 I -- my thinking in the matter, and  
11 I'll listen to what counsel says, is I shouldn't answer any of  
12 those specifically, but rather should say that they are not to  
13 consider whether any rules or regulations or procedures to be

14 followed in connection with medical marijuana, that subject is  
15 not relevant to their consideration. I may have to draft  
16 something. Federal law does not permit the growth,  
17 distribution or use of marijuana for medical purposes. That's  
18 the law.

19 And so I would assume that I have to give them what  
20 the law is. Therefore, these questions seem to me to be, do  
21 you need a license, how can this case be brought in California?  
22 You know, I'll draft something, and I'll show it to you before  
23 I read it to them, but that's essentially the approach I would  
24 take, notwithstanding the defense's contention that it is  
25 relevant.

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Watts - Cross / Ampar&aacute;n

1 THE DEFENDANT: Well --

2 THE COURT: Mr. Rosenthal, you should speak through  
3 your lawyers rather than directly to me.

4 MR. BEVAN: Well, question number 3, Your Honor,  
5 once again, points up the public misperception as to what  
6 11362.5 permits.

7 MR. AMPAR&Aacute;N: Your Honor --

8 THE COURT: And I agree that the response is that  
9 federal law controls in this case and state law is irrelevant.  
10 But there is, I would submit, general misunderstanding as to  
11 the limited scope of 11362.5, notwithstanding assertions  
12 through questioning at times in this trial.

13 MR. BEVAN: I believe Your Honor has written an  
14 opinion and within that opinion, Your Honor made a statement to  
15 the effect that the defendant's grow did not comport with  
16 California law either.

17                   Now, I agree by telling the jury that, if the jury  
18 were to be told that his grow did not comport with California  
19 law, that would probably be inappropriate, but it would  
20 certainly clear up the misunderstanding. Because I know jurors  
21 when they hear of federal prosecution on marijuana and there is  
22 medical marijuana lurking, there is this red flag up there and  
23 people don't know the fine print of 1136.5.

24                   I think question 3 gets at that very issue.

25                   MR. AMPAR&Aacute;N: So do all of the proffered defense  
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                  Watts - Cross / Ampar&aacute;n

1 witnesses.

2                   THE COURT: No.

3                   THE DEFENDANT: I would just like to say that  
4 Lockyear, Attorney General Lockyear said that if it was up to  
5 him --

6                   THE COURT: Mr. Rosenthal --

7                   THE DEFENDANT: -- this garden would still be in  
8 existence. So, obviously, Mr. Bevan is lying when he says that  
9 it was against California law.

10                  THE COURT: Let --

11                  THE DEFENDANT: That the Attorney General of  
12 California thought it was within California law. It's far from  
13 Mr. Bevan to say it isn't.

14                  THE COURT: Mr. Rosenthal, you should speak through  
15 your lawyer. Let your lawyer speak.

16                  THE DEFENDANT: I like to speak.

17                  THE COURT: Okay. Here is the issue. You see,  
18 first of all --

19                  THE DEFENDANT: He is misrepresenting it.

20                  THE COURT: It's not a question of whether people

21 have gotten it right or gotten it wrong with respect to what  
22 California law permits. I don't think that is the issue. I  
23 think, in fact, a number of people don't understand California  
24 law or operate under a misimpression. But the fact of the  
25 matter is, it's either relevant or it isn't relevant. Not

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Watts - Cross / Ampar&aacute;n

1 whether it's relevant because it's misunderstood or irrelevant  
2 because it's correctly understood, or vice-versa.

3 The fact of the matter is, either the law comes in  
4 or it doesn't come in.

5 And the Court has consistently ruled from 1998 on,  
6 or maybe it's '99, I forget when this case was first brought.  
7 No, it couldn't have been brought in '99. I had the Oakland  
8 Cannabis Clubs in 1999. Yeah.

9 Have made arguments on the question of the  
10 interrelationship between the California law and the federal  
11 law. And I ruled particular ways, and it went up on appeal as  
12 it should. And, occasionally, the Court of Appeals reversed  
13 me, and occasionally, the Court of Appeals affirmed me. But of  
14 course, when the Court of Appeals reversed me, the Supreme  
15 Court reversed them. So -- at least on the issue of marijuana.

16 So we now have, like it or not, a clear statement  
17 from the federal courts as to what is relevant and what is not  
18 relevant with respect to marijuana.

19 So I don't think that it makes any sense at all, I  
20 mean, I don't think it's appropriate to start to talk to these  
21 jurors as to their misperceptions, if they are misperceptions,  
22 and the defense may argue that the jurors have gotten it right,  
23 not that it's wrong. But whether their position is that the

24 jury is right or the jury is wrong, the question is is it  
25 relevant. And the Court has ruled that it's not relevant.

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Watts - Cross / Ampar&aacute;n

1 Mr. Ampar&aacute;n.

2 MR. AMPAR&Aacute;N: The orientation of these questions,  
3 Your Honor, is seeking guidance and information as to whether  
4 or not Mr. Rosenthal was involved in a medical capacity,  
5 looking at these questions. And if the Court is simply going  
6 to say federal law precludes consideration of the medical  
7 marijuana law, I don't think it answers the question. But I  
8 understand what the Court would be saying.

9 THE COURT: Yeah.

10 MR. AMPAR&Aacute;N: I would have an objection to start  
11 implicating or choosing we are going to talk about California  
12 law as to number 3 but not to 2 through 6, that would be  
13 problematic for me.

14 THE COURT: I intend to --

15 MR. AMPAR&Aacute;N: It's hard to argue in a vacuum.  
Could

16 we perhaps --

17 THE COURT: I'll write something. I'm going to  
18 write something, what I propose to give. But I'm telling you  
19 now what I propose to give them is to tell them to answer these  
20 questions in the manner I have just indicated.

21 Okay. All right.

22 So --

23 MR. BEVAN: Your Honor, may I ask this, so if the  
24 defense put on no case tomorrow, would it be Your Honor's  
25 intention to be in recess, then, for the jury until Tuesday?

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Watts - Cross / Ampar&aacute;n

1                   THE COURT: Well, the actual answer would be but for  
2 the proceeding on Friday, I would move right away into -- I  
3 mean, tomorrow I would go over all the jury instructions, and  
4 argument would be on Thursday. Now, I wouldn't make you argue  
5 tomorrow in any event.

6                   So that is what I would do. I mean, if you ask me  
7 what is my schedule. If the defense doesn't have any case,  
8 wishes to rest, it's their right to rest, if they so choose, I  
9 would then do jury instructions on Wednesday and argument on  
10 Thursday. That's what I would do.

11                  MR. BEVAN: Well --

12                  THE COURT: Now, that is save and except for the  
13 fact that we have a proceeding on Friday involving all of these  
14 individuals.

15                  So I guess what I need to do is you have to make a  
16 judgment. You now know that I can go in a couple of different  
17 ways. No. 1, is we can agree to forget about all those people  
18 who are coming in on Friday; and No. 1 -- well, let me start  
19 again.

20                  If the defense chooses not to call any witnesses,  
21 then the Government has the option of proceeding tomorrow with  
22 jury instructions and argument on Thursday.

23                  In the alternative, the Government has the option to  
24 proceed on Friday with these witnesses. But if you choose that  
25 option, then tomorrow or Thursday, I haven't figured out which

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                  Watts - Cross / Ampar&aacute;n  
1 day, I want to find out, I want to take witness by witness and  
2 try to make some determination as to whether or not I would let  
3 you call this witness in your case.

4 I would have to -- you know, you would have to make  
5 a showing that it's not duplicative. I did read the  
6 memorandum, but I think I always have the right to limit the  
7 number of witnesses if I feel that it's not probative and  
8 basically duplicative, and especially, I must say, if, in fact,  
9 the defense is not by putting on their own witnesses contesting  
10 through other witnesses the testimony and simply arguing this  
11 witness is not credible or that witness is not credible for  
12 this or that, well, that's a forum. That is an entirely  
13 appropriate forum for attacking the Government's case.  
14 Slightly different than attacking the Government's case by  
15 saying, well, you heard Jones and you heard Smith.

16 MR. BEVAN: Well, the problem we have right now is a  
17 lot of things were said, and that is the first thing I'm going  
18 to do when we finish today, is review the opening statement --

19 THE COURT: I think the opening statement --

20 MR. BEVAN: -- from the defense.

21 THE COURT: Well, Mr. Bevan, No. 1, you know, it's  
22 been my experience that opening statements sometimes have a lot  
23 in them that jurors remember, but more often than not they  
24 don't.

25 No. 2, I certainly would tell them for the 13th time

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Watts - Cross / Ampar&aacute;n

1 that the opening statements is not evidence.

2 No. 3, you are free in your closing argument to  
3 point to the opening statement and talk about the absence of  
4 evidence in support of what the claim was. You are free to do  
5 that. And, of course, they are free to do the same thing.

6 So, you know, that is just argument. It happens all  
7 the time. But I don't think the opening statement provides --

8 at least in my mind, it doesn't really provide a vehicle for  
9 then calling witnesses to rebut what was said in the opening  
10 statements when there is no evidence of what was said in the  
11 opening statement.

12 MR. BEVAN: Well, no, I'm just saying there were a  
13 lot of factual assertions there of what they expected the  
14 evidence to show, and a lot of things about Mr. Rosenthal  
15 personally, not just the lack of a criminal record --

16 THE COURT: Yeah?

17 MR. BEVAN: -- but other things that we have already  
18 talked about that have yet to be corrected or addressed. That  
19 is No. 1.

20 Secondly, they made it clear to the jury, and they  
21 put some pretty strong labels on our witnesses, liars, thieves,  
22 wife beaters and so forth, and they are going to argue  
23 credibility in their closing, notwithstanding the fact that  
24 they are not going to put on any witnesses.

25 My preference, Your Honor, would be to somehow

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1 advance the determination that Your Honor was going to make on  
2 Friday.

3 THE COURT: I can't. How can I? I've got all these  
4 lawyers coming in with their clients on Friday.

5 MR. AMPAR&acute;N: Some of them from out of state.

6 THE COURT: I can't advance that. That I can't do.

7 You have to go back, review -- you have -- if the  
8 defendant doesn't testify, you have to walk the line, which you  
9 are well aware of, between commenting on his failure to  
10 testify, which you can't do, versus the fact that they said

11 that there would be this evidence and there wasn't that  
12 evidence, you know? That you can do. That you can do, as long  
13 as you don't point the finger.

14 MR. BEVAN: What I'm inclined to do, Your Honor,  
15 is --

16 THE COURT: Why don't you think about it? Just  
17 think. You don't have to decide now. They haven't decided  
18 what they are going to do. You can decide what to do.

19 I am just laying out what I think are the options  
20 for everybody to consider tonight. That is an option. You can  
21 decide and let me know.

22 First of all, I think you have to wait and see what  
23 they are going to do. And, secondly, they will either call  
24 witnesses or they won't call witnesses.

25 Now, is it clear? Does the defense have any

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Watts - Cross / Ampar&acute;n

1 question at all as to what -- I'm not asking Mr. Rosenthal, I'm  
2 asking the lawyers.

3 MR. AMPAR&acute;N: I'm sorry.

4 THE COURT: Do you have any question at all as to  
5 what I would permit Mr. Rosenthal to testify to?

6 MR. AMPAR&acute;N: Your Honor, I think the Court has  
been  
7 very clear.

8 And I apologize for sitting down, I was hit by a  
9 car.

10 THE COURT: I just want to make sure that everybody  
11 understands.

12 Now, let me define it the way I think it's  
13 appropriate.

14                   Because he testifies to that which I have already  
15 ruled to be immaterial doesn't make it material or doesn't make  
16 it relevant. It simply is a story that he wants to tell, okay?  
17 He can do that.

18                   But, if there is an objection, I -- an objection on  
19 relevancy grounds, I would have to rule on it. But I would not  
20 admonish him in front of the jury. I'm not going to do that,  
21 even though I could.

22                   He wants to tell his story, he can tell his story.  
23 That doesn't make it relevant. But that doesn't mean -- No. 1,  
24 it doesn't mean it's relevant; and No. 2, it doesn't mean that  
25 there won't be some comment by the Court to the jury as to what  
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                  Watts - Cross / Ampar&aacute;n

1 is relevant and what is not relevant because I have a duty, as  
2 I view it, to conduct the trial in accordance with the law.

3                   So if I see a witness or a defendant, or a lawyer,  
4 for that matter, do something outside of what I consider to be  
5 the law, I then comment on it, okay?

6                   So I wanted just to tell you guys that so when you  
7 go through your calculus and you figure out what you want to  
8 do, it's not based upon a misimpression as to what the Court  
9 would permit, especially in the case of Mr. Rosenthal, okay?

10                   MR. AMPAR&Aacute;N: Okay. Every time the Court makes a  
11 statement, I'm more secure in my belief that we will be  
12 resting.

13                   THE COURT: But don't make that judgment. First of  
14 all, you have to decide -- it's actually not your decision,  
15 it's Mr. Rosenthal's decision. And you advise him and you may  
16 agree with him or you may disagree with him, but it's his  
17 decision and his alone whether he wants to testify.

18 MR. AMPAR&Aacute;N: Understood.

19 THE COURT: And he is sitting here, so he is hearing  
20 what I'm saying. I just want it all out there in clear terms  
21 as to what the Court is going to do.

22 Okay. So I'll see you tomorrow at 8:00 o'clock, if  
23 I remember, which I probably will.

24 Thank you.

25 MR. AMPAR&Aacute;N: Thank you.

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1 MR. BEVAN: Thank you, Your Honor.

2 (Proceedings adjourned at 3:35 p.m.)

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Watts - Cross / Ampar&aacute;n

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.

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Sahar McVickar, RPR, CSR No. 12963

May 22, 2007

