

1 about a letter. Can you -- after you provided us with
2 information, did we come to an agreement or provide you with a
3 verbal agreement of what we might be willing to do if you talk
4 to us?

5 A As long as I told the truth, they would write a letter to
6 the state prosecutor to try to reduce the sentence.

7 Q And what would the state prosecutor do if we wrote that
8 letter?

9 A It's up to him if they grant it or not.

10 Q But does the state prosecutor change your sentence?

11 A No; the judge.

12 Q Which judge?

13 A The state judge.

14 Q Okay. And what is your obligation -- let me say this: Is
15 there an actual formal written agreement?

16 A No, there's not.

17 Q And what is your obligation, your understanding of your
18 obligation of this agreement?

19 A As long as I tell the truth, hopefully I get lesser time.

20 Q Are there any guarantees that have been made to you?

21 A No.

22 Q And if you don't tell the truth, what happens?

23 A Everything is canceled.

24 Q Meaning what?

25 A The deal -- well, the verbal agreement, and I could be

1 charged with perjury.

2 Q Tell this jury why you're testifying today?

3 A Because I think it's the right thing for me to do.

4 Q Are you hoping to get less jail time?

5 A Yes, I am.

6 Q How much more jail time do you think you're facing?

7 A Eighteen months.

8 Q And you're hoping for that to be reduced?

9 A Yeah, if possible.

10 MR. MINISH: I have no further questions, Judge.

11 THE COURT: All right. Mr. Bergrin,
12 cross-examination.

13 MR. BERGRIN: Yes, your Honor, thank you.

14 CROSS-EXAMINATION

15 BY MR. BERGRIN:

16 Q You said before you went into the FBI we had a falling out?

17 A Yes, we did.

18 Q And the falling out made you angry. Correct?

19 A Yes, it did.

20 Q It made you upset. Correct?

21 A Yes.

22 Q You said that I was hitting on your daughter or I tried to
23 have a relationship with your daughter?

24 A Yes, you did.

25 Q Can you describe your daughter to this jury?

1 A It's Jennifer McGrath, she's 21.

2 Q About 350 pounds?

3 A She's not 350.

4 Q How much does she weigh, Mr. Castro?

5 A At that time, probably 200.

6 Q And she's about five foot?

7 A Probably a little taller than that.

8 Q Now, you also said that we had a falling out before you
9 went into the FBI and decided to do the right thing about
10 money. Correct?

11 A It was really about you not doing right thing in court to
12 defend me.

13 Q Now, you in that particular case, you were accused of
14 taking a gun during a search while the police came to your
15 house, putting it under the bullet-proof vest of a police
16 officer and pulling the trigger. Correct?

17 A That's what I was charged with.

18 Q And you wanted to lie and get the police officer in trouble
19 and say that they stole money from you. Correct?

20 A I didn't lie.

21 Q Oh, you're telling us the police officer stole money from
22 you?

23 A If you would have did your job and subpoenad the bank
24 surveillance like you was asked to, we would have found out the
25 truth about that.

1 Q So you were angry at me that I didn't subpoena the bank
2 records to show the police officers were lying?

3 A And the surveillance that they stole off my house.

4 Q And the surveillance they stole off your house. You were
5 angry and upset about that. Correct?

6 A Yes.

7 Q As a matter of fact, the demeanor of this low key -- the
8 way you're talking now, that's not the way you act. Right?
9 You're very, very loud and boisterous. Correct?

10 A No, I'm not loud.

11 Q Usually?

12 You're telling us that you're calm like this at all
13 times?

14 A I'm not a loud person.

15 Q Now, you were making, when this conversation between us
16 supposedly happened, you were making 20 to \$25,000 a week.
17 Right?

18 A Yes.

19 Q That's a million dollars a year. Correct?

20 A Correct.

21 Q And you were showing it. You were driving around in nice
22 cars. Correct?

23 A Yes, I was.

24 Q And you were wearing really nice jewelry?

25 A Yes.

1 Q And living way, way -- like an individual who is making a
2 million dollars a year. Right?

3 A Yes, I was.

4 Q And here I come and offer you \$10,000 to do a hit.
5 Correct?

6 A Yes.

7 Q Now, you had no -- no acts of violence in your past.
8 Right?

9 A No.

10 Q Now, you talked about a check. You say I stole a check
11 from you. I stole money from you?

12 A Your secretary called my kid's mother in the --

13 Q You can answer that question, sir.

14 MR. MINISH: He's trying to answer the question.

15 THE COURT: I'll allow it. Go ahead.

16 MR. BERGRIN: All right, Judge. Thank you.

17 A Your secretary called my kid's mother in the office, said
18 there was a check there for her to come and sign for.

19 She then called you -- this is what my kid's mother
20 told me. And you said it was a mistake, don't release the
21 check to her.

22 Q You don't know what happened with that check, isn't that a
23 fact? You're hearing this from your wife or your kid's mother.
24 Correct?

25 A Exactly.

1 Q Now, you didn't know that Tom Fennley from the Essex County
2 Prosecutor's Office along with Assistant Prosecutor in charge
3 of the Forfeiture Section, Kevin McCartle had sent that check
4 to me. Correct?

5 A Correct.

6 Q And you know nothing about that check, other than the fact
7 that you had accused me before you decided to go into the FBI
8 of stealing \$20,000 from you. Right?

9 A Why would your secretary call my kid's mother and tell her
10 to come and sign for the check?

11 Q You accused me of stealing that \$20,000 check from you,
12 isn't that a fact, before you went into the FBI?

13 A Yes.

14 Q Now, when you went to talk to them, the FBI, isn't it a
15 fact that you had hopes of getting this 15-year sentence
16 reduced. Correct?

17 A Not when I first went to speak with them.

18 Q You're telling us that went out there out of the goodness
19 of your heart?

20 A That's why I spoke to them. Then I found out later on that
21 I could probably get my sentence reduced.

22 Q And you're telling this jury, as an individual who has had
23 multiple, probably about ten arrests and run-ins with the law,
24 that you didn't know how to get your sentence reduced? Is that
25 what you're telling us?

1 A The only way to get a good sentence is hire a good
2 attorney.

3 Q And you don't know about cooperation? You knew nothing
4 about cooperation?

5 A I never had a reason to cooperate.

6 Q You're telling us as you testify under oath that you didn't
7 know that through cooperation you could get your sentence
8 reduced. Is that what you're telling us?

9 A I didn't know that.

10 Q Do you understand that you're under oath now?

11 A Yes, I do.

12 MR. BERGRIN: Just give me one second to organize,
13 please, your Honor.

14 THE COURT: Yes.

15 MR. BERGRIN: Excuse me one second. Thank you.

16 Q Mr. Castro, Mr. Minish went over your criminal history,
17 correct, while you were sitting here?

18 A Yes, he did.

19 Q And that's your total criminal history. Right?

20 A Yes.

21 Q In 19 -- excuse me -- on August the 31st of 1988, you were
22 arrested for possession of cocaine and received a Conditional
23 Discharge in January 19th of 1989. Correct?

24 A Yes.

25 Q And I didn't represent you there. Correct?

1 A No, you didn't I don't believe.

2 Q Isn't it a fact that I was in the United States Attorney's
3 Office at that time?

4 A I don't know when you became -- I don't know when you was
5 an attorney in the '80s. I didn't have money, so I couldn't
6 have an attorney represent me, that's why I went to prison.

7 Q In June 25th of 1989, you pled guilty to receiving stolen
8 property. Correct?

9 A Yes.

10 Q And you received a three-year State Prison term. Correct?

11 A Yes.

12 Q And isn't it a fact that John Stevenson, Jr. represented
13 you on that case?

14 A Yeah, it was a court-appointed attorney.

15 Q It was a court-appointed attorney, but it wasn't Paul
16 Bergrin?

17 A No, it wasn't.

18 Q And then your third run-in with the law was a case that was
19 dismissed; a possession of marijuana case. Right?

20 A Yes.

21 Q And that was back in 1991. Right?

22 A Yes.

23 Q And then you had a pool attorney when you pled guilty to
24 possession of cocaine in 1991, where you received three years
25 in State Prison. Correct?

1 A Yes, it was seven with a three and a third for the robbery.

2 Q They all ran together. Correct?

3 A Correct.

4 Q And again, you had a pool attorney and the pool attorney's
5 name was John Stevenson, Jr.. Correct?

6 A I believe that was him.

7 Q And then the next time you got arrested was, you also had a
8 receiving stolen property case in 1991. Correct? May of 1991
9 that Mr. Minish asked you about?

10 A Yes.

11 Q And that ran with the -- that ran together with the robbery
12 case. Correct?

13 A Correct. I was found guilty at trial for the robbery.

14 Q Now, you said that I represented you for the first time in
15 1997. That was your testimony. Right?

16 A Yes.

17 Q And that was a case involving possession with intent to
18 distribute within a thousand feet of a school?

19 A Yes. My home was --

20 Q And possession of a controlled dangerous substance?

21 A Correct.

22 Q And receiving stolen property?

23 A Correct.

24 Q And you're about as sure about that about all your
25 testimony in this case, right? That I represented you?

1 A Yes.

2 MR. BERGRIN: May I approach the witness, your Honor?

3 THE COURT: Go ahead.

4 Q I show you what's been marked D-20 for identification.

5 MR. GAY: Paul, could we see this before -- I don't
6 know what this is.

7 (Counsel confer off the record.)

8 Q I show you what's been marked D-20 for identification, Mr.
9 Castro. Is that a computer printout of Case Number 97, the
10 year 001014?

11 MR. MINISH: Judge, I don't object to the document but
12 Mr. Bergrin has to ask the question the right way. He has to
13 ask him: "Do you know what it is?"

14 THE COURT: He just asked him if that's a computer
15 printout of that number.

16 Now next question. Go ahead. Let's hear the next
17 question.

18 Q Is that a computer printout of that?

19 A Yes.

20 Q And that's the case where you received three years in New
21 Jersey State Prison that you talked about. Correct?

22 A I didn't receive -- I didn't do a three year, I never did
23 three years. I did a seven with a three and a third.

24 Q A seven with a three and a third.

25 So you're telling us -- isn't it a fact that that case

1 represented the robbery, the possession with intent?

2 A Yes.

3 Q And isn't it a fact that the lawyer that is listed is
4 Joseph Ferrante, Jr.?

5 A I didn't use Joseph I don't believe because he wanted me to
6 ride out in an unmarked car and point people out, and I got rid
7 of him.

8 Q So you're telling us that this is incorrect?

9 A I believe so.

10 Q Isn't it a fact that the computer records clearly show
11 that --

12 MR. MINISH: Objection.

13 THE COURT: Okay.

14 MR. MINISH: He cannot just read things in the record
15 when there's no basis for anything.

16 THE COURT: Sustained.

17 Q Isn't it a fact that you used Joe Ferrante on your case and
18 received a three-year sentence?

19 A I don't believe I used him. I gave him a retainer fee. I
20 never went back to retain him as an attorney.

21 Q And I'm not listed anywhere on that case, isn't that a
22 fact, in any of the court records anywhere?

23 A I don't see it on there.

24 Q Isn't it a fact that in 2000, the next arrest occurred from
25 1997, the next time that you were arrested and did any kind of

1 time was in -- you were arrested in 2007. Correct? From 1997
2 when you did the State Prison time and you got out, the next
3 time you were arrested was in 2007. Isn't that a fact, sir?

4 A For the assault? The aggravated assault or something.

5 Q But you were charged -- it ended up being a harassment
6 case, correct, that you pled guilty to. Right?

7 A Correct.

8 Q And that was, you were arrested on March the 3rd of 2007.
9 Isn't that a fact?

10 A Yes.

11 Q And you pled guilty on January the 11th of 2008. Correct?

12 A I can't recall the exact date but I did plead guilty to it.

13 Q And I was your attorney on that. Correct?

14 A Yes.

15 Q And isn't it a fact that's the first time I ever
16 represented you, in 2007, March 2007, when you originally were
17 charged with aggravated assault, and I got it reduced to
18 harassment. Isn't that a fact, sir?

19 A I don't believe that was the first time you represented me.

20 Q You don't believe?

21 Isn't it a fact, sir, that there's not a computer
22 record anywhere on earth that I ever entered an appearance
23 on --

24 MR. MINISH: Objection.

25 MR. MINISH: How could he possibly answer that?

1 THE COURT: Sustained.

2 Q Isn't it a fact that when you represent somebody you enter
3 an appearance on their behalf. Correct?

4 A Yes.

5 Q And when you go to court there's court records in reference
6 to me representing you. Right?

7 A Correct.

8 Q I have to stand up before the judge and say: Paul Bergrin
9 on behalf of Albert Castro. Right?

10 A Correct.

11 Q Isn't it a fact that Joe Ferrante stood up and represented
12 you in 1997 when you received the State Prison term?

13 A I don't believe he represent me. I don't believe I went
14 with him as the attorney.

15 Q You said you "don't believe"?

16 A I never went back to see him after the retainer fee.

17 Q Well, you didn't hire me. Isn't that a fact?

18 A I'm pretty much sure I hired you.

19 Q Pretty much sure? What does "pretty much sure" mean?

20 A I'm pretty sure I did hire you as an attorney.

21 Q So if the court records depict --

22 THE COURT: Okay, Mr. Bergrin, you've covered this
23 area.

24 Q Now, on March the 27th of 2008, you were arrested, correct,
25 on a very serious first degree case?

1 A March 27th?

2 Q On September the 27th of 2008 you were arrested on a very
3 serious offense. Correct?

4 A It was for robbery that never happened.

5 Q But you pled guilty to a robbery that never happened?

6 A You was my attorney.. I had to listen to what you told me,
7 that's why I paid you for the case.

8 Q And you stood up and your put your hand on the Bible and
9 you swore to the judge that you're telling the truth. Correct?

10 A Yes, it was.

11 Q And the judge asked you questions as to whether you're
12 telling the truth. Right?

13 A Correct.

14 Q And in front of the judge, I didn't put -- I didn't put
15 words in your mouth, the words came out of your mouth.

16 Correct?

17 A Correct.

18 Q That's the case that you were riding around with an
19 informant planning a robbery of a store, a restaurant on Ferry
20 Street. Correct?

21 A Not Ferry. On New York Avenue.

22 Q New York Avenue.

23 And they tape-recorded you planning the robbery on
24 tape with somebody else. Correct?

25 A Correct.

1 Q So you're telling this jury that I put the words in your
2 mouth and made you lie? Isn't that what you just said?

3 A No, I didn't say you put the words in my mouth.

4 MR. MINISH: Objection.

5 THE COURT: No, No, I'll allow it. Go ahead.

6 Q Isn't that what you just said, Mr. Castro?

7 A I didn't say you put the words in my mouth, but I hired you
8 as an attorney to represent me.

9 Q And you pled guilty to second degree, facing 5 to 10 years,
10 conspiracy to commit robbery. Correct?

11 A Correct.

12 Q And you swore to the judge that what you told the judge was
13 that done knowing on your part. Correct?

14 A Correct.

15 Q Intelligent. Correct?

16 A Yes.

17 Q Voluntary?

18 A Yes.

19 Q And that you are -- you're pleading guilty because you are,
20 in fact, guilty. Isn't that what you said?

21 A I was guilty about talking about it. There was never an
22 attempt.

23 Q You pled guilty to that offense. Didn't you?

24 A Correct.

25 Q And you were arrested again on May the 2nd, of 2008.

1 Correct?

2 A May the 2nd was the first arrest.

3 Q The first arrest, I'm sorry. And the first arrest involved
4 first degree manufacture, when you were facing 10 to 20 years.
5 Correct?

6 A Correct.

7 Q But because you're a career criminal, a third time loser,
8 you were facing life in prison, right, under the extended term
9 career criminal statute?

10 A I don't remember a life plea. I don't know what I was
11 facing.

12 Q You don't remember it being explained to you, Mr. Castro,
13 that if you get convicted of first degree manufacturing and
14 distribution of drugs? You don't remember, Mr. Castro --

15 A That was 25 years I was facing.

16 Q You were facing 25 years. Correct?

17 A Correct.

18 Q And you knew that when you pled guilty. Right?

19 A Correct.

20 Q And you also were accused again of attempted murder of a
21 police officer by putting the gun underneath his vest and
22 pulling the trigger. Right?

23 A Anybody in their right mind who believes that, I wouldn't
24 be sitting here today.

25 Q So you're telling us that the police officer completely

1 fabricated that and made that up about you?

2 A Correct.

3 Q You read the charge sheet, correct, what they call the
4 "request to recommend disposition" that lists all the charges?

5 A Yes.

6 Q And isn't it a fact it's listed under there that you're
7 eligible for no Early Release Act because defendant placed a
8 handgun against the abdomen of a police officer and attempted
9 to shoot the officer? You remember reading that. Correct?

10 A Correct.

11 Q And you pled guilty, as a matter of fact, in pointing the
12 weapon at the police officer, a fourth degree aggravated
13 assault. Right?

14 A I pled guilty to that because you got it downgraded to
15 first degree pointing.

16 Q And you told the judge that you pointed the gun at the
17 police officer. Right?

18 A I told him that that's not true at all. I was arguing with
19 him about a lot of things in my case and got two charges
20 dismissed on my own, about four to five doors and cameras for
21 selling drugs which was never true.

22 Q When you pled guilty to the judge about pointing the gun at
23 the police officer, the judge asked you if you're doing it
24 voluntarily. Correct?

25 A I was listening to you.

1 Q The judge was talking and addressing you personally. Isn't
2 that a fact, Mr. Castro?

3 A Yes.

4 Q And you put your hand on the Bible on that day and you
5 swore to tell the judge the truth. Right?

6 A Exactly.

7 Q And he asked you if you're doing it knowingly. Correct?

8 A Yes.

9 Q Voluntarily?

10 A Yes.

11 Q Of your own free will?

12 A Yes.

13 Q "Is anybody forcing you to take the plea?" And you said
14 "no."

15 A No.

16 Q "Have you had enough time to discuss the case with your
17 attorney?" Correct?

18 A Yes.

19 Q "Do you have any questions of the Court?" And you said
20 "no" in reference to those two charges. Correct?

21 A Correct.

22 Q And "You understand what you're doing," and you said "yes."

23 A Yes.

24 Q And "Nobody is forcing you, coercing you or threatening
25 you?" Correct?

1 A Didn't I go over the whole case with you before I even took
2 a plea bargain?

3 Q Are you telling us now that you pled guilty and swore to
4 all those facts as being true, and you were lying to the judge?
5 Is that what you're telling us?

6 A First degree pointing was never true. I did get caught
7 with weapons, drugs, stolen property. I never pointed a gun at
8 a cop.

9 Q But you said that to the judge after being advised of your
10 rights?

11 A I did say that.

12 Q So you're saying that you lied to the judge in open court?

13 A I didn't lie. It got downgraded from attempted murder on a
14 police officer, first degree pointing, so I copped out to it.

15 Q You said you didn't lie.

16 When you tell the judge that you did something and now
17 you tell this jury that you didn't do something, you're telling
18 us it's not a lie?

19 A Was you trying to fight the case for me?

20 Q Are you telling us that's not a lie?

21 A Maybe it is a lie. But I only took the plea because of
22 you.

23 Q When you went before the judge, the judge was directing his
24 questions to you personally. Correct?

25 A Did I discuss the case with you beforehand?

1 MR. BERGRIN: Your Honor, could you please instruct
2 the witness to answer my question, Judge?

3 THE COURT: All right. Mr. Castro, try to listen to
4 the question and answer the question that's asked.

5 THE WITNESS: I'm listening to it.

6 THE COURT: All right.

7 Q When you were in court, the judge said, I'm going to direct
8 the questions to you, Mr. Castro, personally. Correct?

9 A Correct.

10 Q And you answered the questions in court, not me. Right?

11 A You're right.

12 Q You put your hand on the Bible, not me?

13 A You're right.

14 Q And you told the judge that you pointed the gun at the
15 police officer. Correct?

16 A Correct.

17 Q And are you telling us now that you deliberately,
18 intentionally and knowingly lied to that judge?

19 A I never pointed a gun at a cop. I took it because it was a
20 lesser charge on a plea bargain because he didn't defend me,
21 like I said, at first. If he would have done what he was
22 supposed to do I probably wouldn't be going through this today.

23 THE COURT: I'm going to ask: There was a charge
24 initially that you did, in fact, point the gun at the police
25 officer and the police officers are the ones who made that

1 charge. Correct?

2 THE WITNESS: Yes.

3 THE COURT: Okay.

4 Q And the police officer swore out the complaint against you.
5 Correct?

6 A Yes.

7 Q And you also pled guilty to distributing drugs within a
8 thousand feet of a school. Correct?

9 A Yes.

10 Q Now, where were the drugs found?

11 A In Stephanie Castro's house.

12 Q And who is Stephanie Castro?

13 A My daughter.

14 Q And how old was your daughter at the time?

15 A She's 25, three years -- I believe 21.

16 Q And had no prior record. Correct?

17 A Correct.

18 Q Now, isn't it a fact, sir, that you pled guilty to a 15
19 year sentence?

20 A Yes.

21 Q For the robbery, the drugs, the guns, the conspiracy, even
22 possession of the handgun by a convicted felon? Correct?

23 A Correct.

24 Q And with all your convictions, you had approximately eight
25 or nine convictions totally by then. Correct?

1 A Yes.

2 Q And isn't it a fact, sir, that on a 15 year sentence,
3 there's no way you're being paroled after five years. Isn't
4 that a fact?

5 A I can't say that's a fact.

6 Q You know the system, Mr. Castro. Right?

7 A I know the system, but parole just don't hit you for any
8 reason.

9 Q You were convicted of a first degree drug case. Correct?

10 A I understand, yes.

11 Q And you were convicted of guns with drugs. Correct?

12 A Correct.

13 Q And you were convicted of a crime of violence in that you
14 pointed a gun at a police officer under the Graves Act. A
15 serious offense. Correct?

16 A Correct.

17 Q The Graves Act means that you serve a certain amount of
18 time before you're eligible for parole. Correct?

19 A Yes.

20 Q And you had a prior robbery conviction. Right?

21 A Yes.

22 Q And a prior drug conviction. Correct?

23 A Correct.

24 Q And a prior receiving stolen property conviction?

25 A Yes.

1 Q As a matter of fact, you had multiple robbery convictions
2 because you pled guilty on that day also to another robbery.
3 Right?

4 A To another robbery?

5 Q To a robbery where you had planned a robbery while being
6 recorded, that you say now that you didn't commit?

7 A Correct.

8 Q Now, isn't it a fact, sir, that you knew that you were not
9 being released after five years with the 15 and the five
10 sentence that I negotiated for you?

11 A There's no way for me to say I definitely knew that.
12 Because it's up to parole when I go in front of them to release
13 me or not release me.

14 Q And you're telling us as you testify today that you didn't
15 suspect or believe in your mind of yours, being involved in the
16 system and this being your third strike, that you're going to
17 be released after your first eligibility for parole? Is that
18 what you're telling us under oath?

19 A I can't say that I know for sure I was going to get
20 released. If you do good in prison, they'll probably grant you
21 parole; if not, they give me a hit.

22 Q Now, you said -- and if you get a hit, you could spend up
23 to 12 or 13 years in State Prison. Isn't that right?

24 A It's only if you really get into a lot of trouble. Parole
25 is not going to max you out. That's the max time. They don't

1 usually do that unless you are a real pain in the ass in
2 prison.

3 Q Now, your record in prison was not a good record either.
4 Correct?

5 A Why wasn't it?

6 Q You had that a lot of disciplinary action in prison, didn't
7 you?

8 A No.

9 Q Now, you testified that I represented Laura McGrath, the
10 mother of your children?

11 A I'm pretty sure you represented her on her case.

12 Q Pretty sure? What year was that?

13 A I don't recall the year.

14 Q What month was it in?

15 A I don't remember.

16 Q You said that I represented Carmen DeSilva?

17 A Carmen DeSilva got raided. I did send him to see you
18 because you told me to watch out with him. So how would you
19 tell me that if he didn't go see you?

20 Q Isn't it a fact that Carmen DeSilva never retained me to
21 represent him?

22 A I don't really know if he retained you or not. I did send
23 him to you.

24 Q Then why did you tell jury that I represented him?

25 THE WITNESS: Well, I sent him to him. I don't know

1 if he represented him or not.

2 Q And isn't it a fact also -- who else did you send to me?

3 A Michael Castro, my nephew went to you.

4 Q And did I represent Michael Castro?

5 A I can't --

6 THE WITNESS: I don't remember if he represented him
7 or not.

8 Q But you remember a conversation that happened back in, what
9 year is it?

10 A 2003, because that's something that you can't forget.

11 Q Now, you talked about a David Perara. Did you know a David
12 Perara?

13 A I talked about --

14 Q Do you know David Perara?

15 A No, I don't.

16 Q You don't know David Perara?

17 A I never spoke about a David Perara.

18 Q Do you know a David Perara?

19 A No.

20 Q Do you know an individual who you went to talk to the FBI
21 about in 2007?

22 A The only people I spoke to the FBI about was the police.

23 Q And that was in 2007. Correct?

24 A I believe so, because they came looking for me at my job,
25 and I was scared so I went down to the office and I spoke to

1 them.

2 Q And did you agree to cooperate with the FBI back in 2007?

3 A About the police, yes.

4 Q And when you spoke to the FBI, you spent a lot of time with
5 them. Correct?

6 A I didn't spend a lot of time with them, I spent a decent
7 amount of time with them.

8 Q So you essentially were cooperating with the FBI since
9 March the 6th of 2007. Correct? Or even earlier than that,
10 I'm sorry, since February 23rd of 2007. Right?

11 A I believe that's right.

12 Q And when you went to the FBI, you're telling us they didn't
13 ask you about a Perara?

14 A I don't recall the names.

15 Q And you're telling us that you don't know a Mr. Perara?

16 A No, I don't.

17 Q An individual who was involved in pornography. David
18 Perara.

19 A Oh, yeah. I don't know his last name. I believe -- not
20 to -- I believe I told Shawn and Joe Minish about him but I
21 didn't know his last name.

22 Q But you went to the FBI specifically, and one of the things
23 they were asking you about is David Perara. And you agreed to
24 cooperate and assist the FBI. Isn't that a fact?

25 A That's not true.

1 Q When you went to the FBI in February the 23rd of 2007,
2 you're saying that you didn't know the name David Perara?

3 A I did not know his last name.

4 Q You knew David. Right?

5 A I know David. I never knew his last name.

6 Q Now, when you went to talk to them, you agreed to cooperate
7 with the FBI. Correct?

8 A I went to speak with them for one thing only, and that was
9 the corruption of the police in Essex County.

10 Q And when you talked to them, did you ever tell them about
11 this conversation that we had in 2003?

12 A No, I didn't.

13 I had no reason to speak upon that.

14 Q Well, you had a robbery charge over your head. Correct?

15 A Correct.

16 Q And you were facing heavy State Prison time as a third-time
17 offender then. Correct?

18 A You're right.

19 Q And as a matter of fact, your wife also went down to the
20 FBI before you began to cooperate. Right?

21 A Correct.

22 Q And your wife went down to the FBI before you came up with
23 this statement, and you spoke to Mr. Minish about it. Correct?

24 A Correct.

25 Q And as a matter of fact, you are the one who reached out

1 for Mr. Minish. Right?

2 A Correct.

3 Q When you reached out for him, you didn't know that he'd be
4 helping yourself. Right? Is that what you told this jury?
5 You had no idea whatsoever that you'd receive leniency?

6 A I did not know I would get less time. .

7 (Counsel confer off the record.)

8 Q Do you remember testifying before a Federal Grand Jury on
9 May the 12th of 2009?

10 A Yes.

11 Q And that was only approximately a week after you went in to
12 speak to them. Correct?

13 A I went to see them three times.

14 Q Well, the first time you ever talked to them was on April
15 the 31st of 2009. Correct?

16 MR. MINISH: Judge, that's incorrect, that's not what
17 he testified to.

18 THE COURT: Yeah.

19 No, Mr. Bergrin, rephrase that question.

20 Q The first time that you ever gave information to the FBI
21 was on April the 31st of 2009 during a proffer session.
22 Correct?

23 THE COURT: Wait. You just asked him questions about
24 a prior going to the FBI in 2007.

25 MR. BERGRIN: Yes, your Honor. Now I'm talking about

1 something else.

2 THE COURT: All right. Well, you said "the first time
3 he ever went to the FBI."

4 MR. BERGRIN: I'm sorry.

5 THE COURT: The first time he ever went to the FBI was
6 in 2007.

7 Q Right. You went do the FBI to cooperate with them back in
8 February of 2007. Correct?

9 A Correct.

10 Q And you spoke to them and you said, I'll be a cooperator of
11 yours. Correct?

12 A I never told them I'd be a cooperator of theirs. I went to
13 speak with them about Michael Lolly, Richie Webber, Dennis
14 Reilly, the police, the corruption in Essex County.

15 Q And isn't it a fact you advised the FBI that you're willing
16 to cooperate with their investigation?

17 A Exactly.

18 Q And then you went back by contacting them, correct, on
19 April, in April the beginning of April. Correct?

20 A Yes.

21 Q And you said you got cold feet. Right?

22 A Yes, I did.

23 Q You got cold feet because they advised you of your rights
24 and told you that if you're lying that you're going to be
25 prosecuted. Right?

1 A No.

2 Q Now, you went back to them on April the 31st, that's the
3 next meeting you have, right, of 2009?

4 A Yes.

5 Q And for the first time you reveal this statement about this
6 meeting that we had at my office. Right?

7 A Correct.

8 Q And then about a week -- a little over a week later you
9 testify before a Federal Grand Jury. Correct?

10 A Correct.

11 Q And you're telling us that within that one week period,
12 that you had no knowledge whatsoever about you getting a
13 reduced sentence and helping yourself?

14 A They never told me about -- I never knew that until after I
15 spoke with them, with Joe.

16 Q Joe. Are you on a first name basis with Joe?

17 A Joe Minish. Joe Minish.

18 MR. BERGRIN: May I approach the witness?

19 THE COURT: Yes.

20 Q I show you what's been marked D-21 for identification.

21 Is that your testimony before a Federal Grand Jury on
22 May the 12th of 2009?

23 A Yes.

24 Q I ask you to look at page 4, line 17.

25 A I did say that before. But there's no guarantee. I told

1 the jurors that earlier, that I'm testifying --

2 THE COURT: First of all, there's no question pending.
3 You just looked at that.

4 Now, if there's a question, go ahead, Mr. Bergrin.

5 Q Isn't it a fact that you went to the meeting with the
6 prosecutor's office approximately two weeks, when you first
7 revealed this statement, two weeks before you were about to be
8 sentenced to a 15 year term with a five-year period of parole
9 ineligibility to State Prison, you went to the Government and
10 the U.S. Attorney's Office. Isn't that a fact, sir?

11 A Yes

12 Q And isn't it a fact that you then testified before a
13 Federal Grand Jury on May the 12th, approximately one week
14 before you were about to be sentenced to a 15 years in State
15 Prison?

16 A Correct.

17 Q And isn't it a fact, sir, that you testified with the hopes
18 of obtaining a reduction in your state sentence?

19 A Nothing was promised. Yes, that's why --

20 Q Isn't it a fact, sir, that you went there with the hope of
21 receiving a reduction in your state sentence?

22 A That's what I was told, yes.

23 Q So why did you tell us a couple of minutes ago that you
24 didn't expect it or you had no belief in it?

25 A After they told me. I never knew before I went to them.

1 That's what I said.

2 Q And you're telling us as you sit here that you had no
3 expectations, no hopes, or no beliefs that you were going to
4 receive a state reduction --

5 MR. MINISH: Judge, Mr. Bergrin has to be more
6 specific with his period of time in his question because the
7 witness has answered it two different ways for two different
8 periods of time.

9 THE COURT: Sustained.

10 Mr. Bergrin rephrase the question.

11 Q Are you telling this jury under oath that when you spoke to
12 the prosecutors on April the 31st, for the first time in your
13 life, of 2009 in reference to this statement, over six years
14 after this alleged statement was made, that you had no
15 expectation, hope or belief of receiving a reduction in your
16 state sentence of 15 years?

17 A That is correct.

18 Q Now, you talked about the fact that you were angry with me.
19 Correct?

20 A Correct.

21 Q You accused me of selling you out. Right?

22 THE COURT: Mr. Bergrin, let me interrupt you for a
23 moment. You have a ways to go?

24 MR. BERGRIN: Yes.

25 THE COURT: Because it's 4 o'clock and we have to

1 address something else before the end of the day.

2 MR. MINISH: Judge, can I be heard just briefly?

3 THE COURT: You are going to go on for a little while
4 longer. Correct?

5 MR. BERGRIN: For a while.

6 THE COURT: And there will be some redirect?

7 MR. MINISH: Yes.

8 Could we be heard very briefly?

9 THE COURT: Yeah.

10 (At the sidebar.)

11 THE COURT: Okay.

12 MR. MINISH: Judge, I just want to make the Court
13 aware of the situation that this is a WITSEC witness, Mr.
14 Castro, and tomorrow's witness is also a WITSEC witness which
15 is going to create some issues or may create some scheduling
16 issues. So I don't know if Mr. --

17 THE COURT: Why are they scheduling issues?

18 MR. MINISH: Just manpower issues. We're just going
19 to have to -- because we took this witness out of order.
20 Remember, we had told them initially they were going to be done
21 during the day because we originally had intended to take the
22 officer before, and now they're out of order. And I'm not sure
23 there is an issue or isn't, I just wanted to make the Court
24 aware.

25 THE COURT: How much more do you think you have?

1 MR. BERGRIN: An hour.

2 THE COURT: An hour? Then we can't do it today.

3 MR. MINISH: Okay.

4 THE COURT: We have Mr. Klingeman here on the -- tell
5 the Marshals to work it out. I'm not losing a day tomorrow.

6 MR. MINISH: I understand, Judge.

7 THE COURT: So I'm sorry, but, you know, tell them to
8 work it out. And if you need me to tell them that, I'll tell
9 them that.

10 MR. MINISH: I don't think it will be necessary.

11 THE COURT: No. If you need me to tell them, I'll
12 tell them right now in a nice way. I'll just tell them we
13 really need their cooperation to get the other witness here
14 tomorrow, too. He'll be done by 10:30 or so, and then we'll
15 put Mr. Young on.

16 Okay. Thanks.

17 MR. MINISH: Judge, maybe just one thing. It may help
18 a little bit if we started tomorrow at 9:30, not at 9:00.

19 THE COURT: What?

20 MR. MINISH: If we start at the normal 9:30, not at
21 9:00. The normal 9:30 may help a little.

22 THE COURT: Why don't we say 9:00 so I get the jury
23 here, and let's try to get this guy back here at 9:00.

24 MR. MINISH: No, I'm saying if we go back to what we
25 had been doing the first few days.

1 THE COURT: I'm saying why?

2 MR. MINISH: I think scheduling might make it a little
3 easier. Whatever you want to do.

4 THE COURT: No, we didn't get started until 9:15
5 anyway. If he with say 9:30, it will be quarter to 10:00. I'm
6 trying to get tomorrow and Friday to 1 o'clock full days, and
7 you'll have Monday and Tuesday to regroup if you need it. I'm
8 sorry.

9 MR. GAY: No, it was more about the Marshals'
10 scheduling, not ours. We'll be ready.

11 THE COURT: Okay. I'll tell them 9:00 and they'll do
12 the best they can do. Okay?

13 (In open court.)

14 THE COURT: Ladies and gentlemen, we'll recess for the
15 day. We'll begin tomorrow at 9 o'clock. Tomorrow will be a
16 full day. As I told you, Friday we're going to start at 8:30,
17 but leave at 1:00 -- probably 1:00, maybe 2:00 the latest.
18 Okay? So remember Friday, bring something if you need a snack
19 in between or something. Okay?

20 Please don't discuss anything about the case, don't
21 listen to the papers -- listen to the radio or television, if
22 there's something on -- I don't know if there is -- and don't
23 read anything about the case, and don't start to prejudge the
24 case either, because we still have a ways to go.

25 So we'll see you tomorrow morning at 9:00 o'clock.

1 Thank you, everyone.

2 THE DEPUTY CLERK: Please rise for the Jury.

3 (The Jury leaves the courtroom.)

4 THE COURT: All right, everyone, please be seated.

5 Mr. Klingeman, would you step forward.

6 A MARSHAL: I have to wait until the jury clears,
7 Judge, until the jury clears out.

8 THE COURT: Okay. We'll need him back here at 9:00
9 tomorrow. Thanks. I know it's a bit of a scheduling problem.
10 I appreciate your effort. Okay?

11 All right. Thanks.

12 THE COURT: Mr. Klingeman, we have your October 18th
13 letter, and I think all counsel have gotten it as well.

14 Mr. Lustberg --

15 MR. LUSTBERG: Yes, sir.

16 THE COURT: -- you have Mr. Klingeman's letter.
17 Correct?

18 MR. LUSTBERG: Yes, your Honor.

19 THE COURT: Okay.

20 (Witness temporarily excused and escorted out of the
21 courtroom by the Marshals.)

22 THE COURT: Okay.

23 MR. LUSTBERG: And, Judge, we had filed a response
24 this morning.

25 THE COURT: I have that as well.

1 MR. LUSTBERG: Thank you.

2 THE COURT: I have that as well.

3 Hold on one second.

4 All right. Mr. Klingeman.

5 MR. KLINGEMAN: Your Honor, thank you. Henry
6 Klingeman for Anthony Young, who I anticipate will be a witness
7 in this case shortly.

8 In anticipation of Mr. Young's testimony, I obtained
9 the transcript of Mr. Young's testimony in United States vs.
10 William Baskerville, a case that was tried in 2007 before Judge
11 Joel Pisano. And I noted in the course of the testimony that
12 when Mr. Young was questioned by both the Assistant United
13 States Attorney in that case as well as the defense counsel in
14 that case, that he was asked a series of questions and gave a
15 series of answers concerning his attorney/client relationship
16 and attorney/client communications with three different
17 attorneys who had represented him leading up to Mr. Young's
18 testimony in the Baskerville case.

19 The first attorney that Mr. Young consulted is a
20 lawyer named Paul Feinberg --

21 THE COURT: Mr. Klingeman, let me do this. I mean,
22 I've read the transcript and I also read your letter position
23 and I read Mr. Lustberg's position.

24 With respect to the -- you're talking about questions
25 that were asked to Mr. Young relating to his attorney, Mr.

1 Feinberg, his attorney, Ms. Taylor, and his attorney, Mr.
2 Fusella. Correct?

3 MR. KLINGEMAN: Yes. Although I'm not particularly
4 concerned with the Fusella testimony.

5 THE COURT: Okay. When he was asked these questions
6 by the Government and on cross -- I think it was cross -- I
7 know there was direct and there was some cross -- when he was
8 asked these questions in the Baskerville trial, he didn't
9 assert an attorney/client privilege at that time. Correct?

10 MR. KLINGEMAN: He did not.

11 THE COURT: As far as the line of questions that were
12 elicited from him in the Baskerville trial, I'm of the opinion
13 that he's waived any attorney/client privilege he has as to
14 that line of questioning. It's already been released, it's
15 already out there. I'm just telling you what my thoughts are.
16 So as to anything that's already been asked of him regarding
17 those questions of lawyers, it's this Court's opinion that he
18 waived any privilege he may have had with respect to that.

19 Now, let me hear whatever arguments you have as to
20 that issue and then whatever else there is.

21 MR. KLINGEMAN: Your Honor, with respect to the
22 waiver, I'm respectful of your preliminary opinion as well as
23 the cases that counsel for Mr. Bergrin cited. I would simply
24 say the following: At the time that Mr. Young was questioned
25 in the Baskerville case, his attorney was not present so far as

1 I know, and there was no attempt by anyone in the courtroom to
2 advise him intelligently about the attorney/client privilege as
3 well as the potential for waiver.

4 Now, I also note in full candor that at some point
5 during the testimony itself Mr. Young acknowledged that things
6 one tells one's attorney are ordinarily confidential, and he
7 would appear to have some understanding of the privilege. But
8 nevertheless, I don't think that the record of testimony at the
9 Baskerville case established a knowing, intelligent and
10 voluntary waiver other than the fact that Mr. Young appeared to
11 answer the questions without hesitation. But your Honor will
12 have to make that final decision.

13 THE COURT: Let me ask the Government something.

14 Well, it doesn't appear from the transcript that any
15 lawyer, Government or the defense lawyers in the Baskerville
16 case, ever raised this issue of attorney/client -- not that
17 they had an obligation to, you know, I'm not saying they did --
18 but it wasn't raised at all, and there's no indication -- Mr.
19 Klingeman, were you his lawyer at the time?

20 MR. KLINGEMAN: I was not, Mr. Fusella, who
21 unfortunately is no longer with us, was his attorney.

22 THE COURT: Okay. But let's assume my opinion is that
23 as to this information he's waived it. I guess the next
24 question is as to other matters if there's other detail or
25 other matters that he may be questioned either by the

1 Government or the defense, what the position is as to that.

2 MR. MINISH: Judge, I can certainly represent for the
3 Government's side, we would not ask any further questions. I
4 mean, we would only, depending on whatever your Honor's ruling
5 is, we would seek to elicit that initially so as if, you know,
6 to blunt any issues, but we certainly would never go beyond
7 that and have no intention on our own to go beyond what was
8 already done.

9 THE COURT: Okay. Let me see. I read this.

10 I mean, when you did your direct, Mr. Minish in the
11 Baskerville trial, you did -- you asked the following question
12 on page -- there's no page number here -- 4573, line 9:

13 (Reading) What did you tell Agent Manson during the
14 course of that meeting?

15 I told her about the murder of Kemo McCray, but when I
16 told her about it, being the lawyer told me not to implicate
17 myself, I told her a guy named...

18 So he just brought it out on his own.

19 MR. MINISH: I certainly didn't seek it, Judge.

20 THE COURT: No. I'm saying. So he volunteered that
21 about "The lawyer told me not to implicate myself. I told her
22 a guy named -- by the name of Jamal McNeil was the shooter,"
23 then you went on after that.

24 MR. MINISH: Judge, I'm sorry.

25 THE COURT: Yeah. No, you did not. I'm saying, your

1 question did not elicit that answer.

2 MR. MINISH: For what it's worth, Judge, I think Mr.
3 Young was not aware that he had sort of privilege, in my
4 opinion. He was just trying to be -- show as much candor to
5 the Court, to the questioner as he could by explaining back
6 what his reasons for what he did and what he said, and more
7 specifically, what he didn't say. And I think it's just part
8 of his story and that's why it came out so freely.

9 THE COURT: He knew he had some confidentiality with
10 his lawyer because if you go on, at the bottom of that page:

11 (Reading) Did you provide any details of the murder to
12 Agent Manson?

13 Yes.

14 "QUESTION: Okay.

15 "ANSWER: What were they -- or "QUESTION: What were
16 they?

17 "Why not?"

18 Then the top of page 4585, he says, "Why not?"

19 "Cause it's confidential information when you're
20 speaking to your lawyer."

21 So, you know, there's a clear indication he understood
22 it's confidential, but he still went on to discuss some
23 communications he had with his lawyer.

24 MR. MINISH: Judge, and again, I understand your
25 Honor's preliminary ruling, but just so it's clear from my

1 understanding, having been there at the time, what Mr. Young is
2 talking about is more that the lawyer can't say things that you
3 tell him. But I think what he reacted to was a question was
4 asked, and although obviously it wasn't a direct question
5 asked, he felt it was responsive and was therefore explaining.
6 I think what he's referring to when he's talking about the
7 privilege is that if he tells his lawyer something bad, that
8 lawyer can't go say things, not that he doesn't have to say it
9 either.

10 THE COURT: All right.

11 MR. KLINGEMAN: Your Honor, just to be clear --

12 THE COURT: Go ahead, Mr. Klingeman.

13 MR. KLINGEMAN: The first question and the first
14 answer concerning privileged matter was prior to the question
15 and answer that your Honor just referenced. And I would direct
16 the Court to page 4572 of the record.

17 THE COURT: Mr. Klingeman, use the microphone, please

18 MR. KLINGEMAN: I'm sorry.

19 I would direct the Court to page 4572. It's a portion
20 of the direct examination, and the question at the top of the
21 page is:

22 "QUESTION: Who was your lawyer?

23 "ANSWER: Paul Feinberg.

24 "QUESTION: And did he come to the meeting or did he
25 advise you with respect to your conversation with Agent Manson?

1 "ANSWER: Gave me advice.

2 "QUESTION: What did he tell you?

3 "ANSWER: He told me, whatever I tell them, the FBI,
4 don't implicate myself.

5 Your Honor, my only comment is in the ordinary
6 course -- and we just tell saw an example of it a few moments
7 ago with the witness who was testifying in this case -- lawyers
8 frequently ask witnesses: "Did you talk to a lawyer," but
9 caution the witness, " don't tell me what you talked about."
10 And that's what the Assistant U.S. Attorney did a few moments
11 ago with the witness, Mr. Castro.

12 That was not done here. And therefore, Mr. Young who
13 at the time was a cooperating witness in the Baskerville case,
14 I'm sure felt some compulsion to answer the Assistant U.S.
15 Attorney's questions.

16 I'm not complaining that anybody committed any kind of
17 wrongdoing or misconduct or what have you, everybody else's
18 mind was on things and not on Mr. Young's privilege. I'm here
19 because my only concern is Mr. Young's privilege. And so I
20 would ask your Honor to confine your ruling concerning the
21 waiver to simply the questions and answers that were asked at
22 the Baskerville case as opposed to allowing a more expanded
23 examination, as well as the summoning of his former lawyers to
24 testify.

25 THE COURT: That's my ruling with respect to --

1 certainly at least in part my ruling is, he's waived it as to
2 whatever he's testified to already. As far as beyond that, if
3 it's contextual, if it's in context with something that's
4 already said, I'll listen to the question and I'll make a
5 determination. If it's fundamental in terms of necessary to
6 put something else in better context, I'm going to consider it
7 then. But that may not be the case. It may not ever come up.
8 We'll see what the question is.

9 And, Mr. Bergrin, you be sensitive to that as well.
10 If you ask the question I may just stop you on my own.

11 MR. BERGRIN: Well, right now, your Honor, I intend to
12 confine myself to essentially what has already been elicited in
13 the prior hearing or prior trial. If something comes up during
14 direct examination, I'll ask for a sidebar and I'll instruct
15 the Court of my position.

16 THE COURT: Then I think we have a pretty good idea of
17 where we're going.

18 Mr. Klingeman, were you intending to be here?

19 MR. KLINGEMAN: I was going to try. Given Mr. Young's
20 personal circumstances we have yet to actually meet, so I'm
21 going to take advantage of the opportunity that he's here in
22 Newark.

23 I would add, though, that representatives of the
24 Defense have reached out for Mr. Young's prior attorneys. One
25 has been subpoenaed, and of course I continue to object on Mr.

1 Young's behalf to that.

2 THE COURT: Well, and they obviously -- you know, I
3 don't know what they'd be subpoenaed for. They may not be
4 needed if Mr. Young is consistent with what he's testified to
5 and he's not taking that into issue. On the other hand, he's
6 making statements that the lawyers told him, "don't implicate
7 myself." On the other hand, if those lawyers say: We never
8 told him that, we told him if you go down there, tell the
9 truth, it may be relevant on their own case; I don't know. And
10 I'll have to cross that bridge when we get to it.

11 MR. KLINGEMAN: And I'll be available to participate.

12 THE COURT: I'm not saying I will, but I just don't
13 know yet. I don't know what Mr. -- I don't know what Mr.
14 Young -- I assume he's going to testify consistent to what he
15 said in the Baskerville trial. But in the Baskerville trial
16 he's saying the lawyers told me, don't implicate myself.

17 Maybe they did. Maybe they said -- I don't even know
18 if they were representing -- I don't even know if they were
19 retained or were they CJA?

20 MR. KLINGEMAN: In the case of Mr. Feinberg, he had
21 represented Mr. Young previously, and then when Mr. Young found
22 himself in this situation, he consulted with Mr. Feinberg.
23 Although he ultimately didn't retain Mr. Feinberg, it's clear
24 that initial consultation would be a privileged conversation.
25 We are all find ourselves in that position from time to time.

1 THE COURT: On the other hand, if he says, if he
2 testifies Mr. Feinberg told me, don't implicate yourself, then
3 doesn't Mr. Feinberg have the right to come forth and say -- if
4 it's factual, doesn't he have the right to say, I never told
5 him that? I think he does.

6 MR. SANDERS: That would be extrinsic evidence for
7 impeachment and you would have to make a call as to whether
8 we're going get into a whole mini-trial with this.

9 THE COURT: I understand. I'm raising it now. I'm
10 not saying -- you're just telling me for the first time the two
11 lawyers have been subpoenaed, and I'm assuming if they're being
12 subpoenaed that may be the proffer. I don't know.

13 MR. LUSTBERG: Yes. Actually only one of them has
14 been subpoenaed thus far. When we were in the middle of all
15 this, that's when Mr. Klingeman filed his application, so we
16 were going to wait and see what the Court did today.

17 THE COURT: We'll cross that bridge if and when we
18 ever get to it. Let's see what he testifies to. And then if
19 you intend to call the lawyer, of course we'd you'd have to
20 make a proffer as to what that's all about.

21 MR. LUSTBERG: Absolutely. And with respect to Mr.
22 Feinberg, we've been in touch with Mr. Feinberg and Mr.
23 Klingeman.

24 THE COURT: Mr. Klingeman, thank you very much for
25 your memo and thanks for coming down.

1 MR. KLINGEMAN: Thank you, your Honor.

2 THE COURT: Maybe you'll get to see Mr. Young
3 tomorrow.

4 We'll get started tomorrow at 9 o'clock. Right?

5 MR. MINISH: Yes. Judge, if I could just put one
6 thing on the record so it's clear, and I wouldn't want anybody
7 to leave the courtroom thinking anything otherwise. Mr. Young
8 at no point accuses any of his attorneys of telling him to lie.

9 THE COURT: No.

10 MR. MINISH: What it is, is if you're going to go say
11 something, you know, just don't volunteer information about
12 yourself, is what he's talking about.

13 THE COURT: His words are, don't implicate yourself.

14 MR. MINISH: That's what he means, but he is not
15 saying that any lawyer told him to lie.

16 THE COURT: No.

17 MR. MINISH: Okay. I just didn't want anybody to
18 leave --

19 THE COURT: I don't know what they told him, but we'll
20 hear from him and see if he's consistent with this. We'll see.
21 Whether a lawyer tells the client to go down, or even a
22 prospective client to go down and don't implicate yourself, or
23 does a lawyer tell the client, tell the truth, if you're going
24 to go down there I'm not representing you, but if you're going
25 to go down there, tell the truth or don't say anything; I don't

1 know. I don't know. I've been there.

2 MR. MINISH: Certainly. I'm certain you have, your
3 Honor.

4 THE COURT: It sounds like Mr. Feinberg wasn't
5 representing him at that time and therefore he said, I'm not
6 representing you. But if you go down there, you know, don't
7 implicate yourself. Maybe you want to answer and that. That
8 doesn't suggest you're telling him to lie either.

9 MR. MINISH: That was my only point. Mr. Feinberg not
10 being here, I just wouldn't --

11 THE COURT: On the other hand, if the lawyer says, go
12 down and tell the truth or don't go at all, I mean, I don't
13 know. I mean, We all know Mr. Young is explaining this to try
14 to explain why he did implicate people in the thing. We all
15 know that's what he's --

16 MR. MINISH: No, implicate himself, Judge.

17 MR. GAY: Implicate himself.

18 THE COURT: Right, right, that's what I meant. I
19 meant that.

20 We all know it was him saying it was the lawyer that
21 told me this. And the inference from that is if it wasn't for
22 the lawyer telling me that, I would have gone down right in the
23 beginning and told them everything.

24 MR. MINISH: I think that's a little further afield,
25 Judge, when you hear the testimony.

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF NEW JERSEY
 Criminal No. 2:09-cr-00369-WJM

3 UNITED STATES OF AMERICA, :
 :
 4 v. :
 :
 5 PAUL W. BERGRIN, :
 :
 6 Defendant :
 - - - - - :
 - - - - - -X

7
 8 Newark, New Jersey
 October 20, 2011

9 B E F O R E:

10 THE HONORABLE WILLIAM J. MARTINI,
 UNITED STATES DISTRICT JUDGE,
 11 and a Jury

12 A P P E A R A N C E S:

13 UNITED STATES ATTORNEY'S OFFICE

14 BY: JOHN GAY

 JOSEPH N. MINISH

 STEVEN G. SANDERS

15 Assistant U.S. Attorneys

16 For the Government

 PAUL W. BERGRIN, Defendant, Pro Se

17 - and -

 GIBBONS PC

18 BY: LAWRENCE S. LUSTBERG, ESQ., Standby Counsel

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19 For Defendant Paul W. Bergrin

20

21 Pursuant to Section 753 Title 28 United States Code, the
 22 following transcript is certified to be an accurate record as
 taken stenographically in the above entitled proceedings.

23 S/WALTER J. PERELLI

24 WALTER J. PERELLI, CCR, CRR

25 OFFICIAL COURT REPORTER

WALTER J. PERELLI, C.S.R., OFFICIAL COURT REPORTER, U.S.D.C.

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I N D E X

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1 the street?

2 THE COURT: Sustained. The objection is sustained.

3 You'll have a chance -- the people at the crime scene
4 will determine where the body was found.

5 MR. BERGRIN: Thank you, Judge.

6 THE COURT: She says from the photograph -- she wasn't
7 there, but from the photograph she thinks it's a few feet from
8 the curb.

9 MR. BERGRIN: could I just ask one additional
10 question?

11 Q Did you read the report, the incident report from Newark
12 Police Officers Darius Smith and Dudley?

13 A Yes, I did.

14 MR. BERGRIN: Okay.

15 THE COURT: Okay.

16 MR. BERGRIN: I have nothing further.

17 THE COURT: Ladies and gentlemen, we'll take about a
18 15 minute recess. Please don't discuss anything about the case
19 and we'll see you back in 15 minutes. Thanks.

20 THE DEPUTY CLERK: Please rise for the Jury.

21 (The Jury leaves the courtroom.)

22 THE COURT: Everyone can be seated.

23 We'll take a recess.

24 Agent. You can step down.

25 (Witness excused.)

1 (Proceedings resume - Jury not present.)

2 THE COURT: Mr. Gay, are we ready to proceed?

3 MR. GAY: As soon as the Marshals bring him up, Judge,
4 we'll be ready.

5 THE COURT: Okay.

6 MR. GAY: I think we have an agreement with the
7 Defense that when the jury comes out, he will be sitting on the
8 stand already, if that's okay with the Court.

9 THE COURT: Sure.

10 Mr. Gay, are you going to use the podium or stand --

11 MR. GAY: I'm going to stand here, Judge, if that's
12 okay.

13 THE COURT: Just keep your voice up, please.

14 MR. GAY: I certainly will, Judge.

15 THE COURT: Can we double-check to see where the
16 witness is, please?

17 (There is a pause in the proceedings.)

18 (The Court and the Deputy Clerk confer off the
19 record.)

20 THE COURT: Can someone advise me where the witness
21 is? Does anyone have any idea of how --

22 THE DEPUTY CLERK: He's on the telephone.

23 (The Witness is escorted into the courtroom by the
24 Marshals.)

25 THE COURT: Are we ready to proceed?

1 (Trial resumes - Jury not present.)

2 (Jury not present.)

3 THE COURT: Good morning. Everyone can be seated,
4 please, I'm sorry.

5 MR. LUSTBERG: Good morning, Judge.

6 THE COURT: Good morning.

7 We have a few minutes. You wanted to address the
8 Court, Mr. Gay, on some issue with respect to --

9 MR. GAY: Judge, I think there would be two things,
10 and that is, I'm not sure if Mr. Lustberg or Mr. Bergrin have
11 decided what, if anything, they're going to do with that, the
12 grievance that was filed, so I don't know if we need to address
13 that at all. That's really for them to decide. I told them
14 what I thought the consequences would be if they asked
15 questions in that area.

16 But the second thing is I want to say that in the
17 grievance there is a reference -- I don't believe it's in the
18 statement itself, but on the cover page -- to a letter that was
19 sent to this office. And I can tell you unequivocally, we
20 received no such letter. And in questioning -- can Mr. Jimenez
21 hear me now?

22 A MARSHAL: No.

23 MR. GAY: In questioning Mr. Jimenez prior to him
24 going on cross-examination, he told me that he did, in fact,
25 send a letter but that the address was not my address. You

1 know, he determined that it was not -- so he sent out such a
2 letter but it was not to the address that would have gotten to
3 me. So on one hand I can tell you unequivocally we received no
4 such letter; on the other hand, it appears from what he would
5 testify, if asked about that, that he sent it to some address
6 that was not an address that I would ever have received it at.

7 MR. BERGRIN: Judge, can we find out if the letter was
8 returned to Mr. Jimenez? Because I think we're entitled to a
9 copy of it.

10 MR. GAY: Judge, just to be clear: We have no such
11 copy.

12 THE COURT: Yeah, no.

13 MR. GAY: I have no -- I didn't even know the letter
14 existed until I saw this.

15 THE COURT: No. They don't know if it's been
16 returned. You can ask Mr. Jimenez on the stand: "Was the
17 letter ever returned?" and see what he says. Nobody is going
18 to speak to him between now and then. If he says yes, it was,
19 but I destroyed it; or if he says, no, it wasn't, it wasn't.

20 All right.

21 MR. GAY: Are we going to address --

22 (Counsel confer off the record.)

23 MR. GAY: Judge, with respect to the next witness,
24 Yolanda Jauregui, there are a couple of issues, and we've been
25 discussing them with Mr. Lustberg and Mr. Bergrin, but I'll

1 THE COURT: Use the microphone, please.

2 MR. GAY: I apologize, Judge.

3 THE COURT: That's okay.

4 MR. GAY: Yes. There is a potential issue that we
5 have discussed. I've discussed it with Mr. Lustberg who is
6 either in the process of or has discussed it with Mr. Bergrin,
7 so I don't know if you want to do a sidebar or if you want
8 to --

9 THE COURT: We'll do it at sidebar. We have the
10 witness here, so let's do it at sidebar.

11 (At the sidebar.)

12 MR. GAY: Judge, if I can make the record because I
13 want to make sure this is on the record.

14 Okay. Judge, we just received at the lunch break
15 something from Mr. Jimenez' lawyer, and it's an Attorney Ethics
16 Grievance form which I guess we'll turn over -- which we have
17 turned over to the Defense and it will be marked as a
18 Jencks/Giglio exhibit for the trial, and we just received it at
19 the lunch break as I said. We made copies, we've turned that
20 over. I believe the Court has a copy of it as well at this
21 point. I won't bother to go over the substance since it's
22 going to be part of the record.

23 But I think the important thing that I do want to go
24 over with the Court is that I had a discussion with Mr. Jimenez
25 about the letter and about the reason why he filed the letter.

1 And so I want to make it clear to Mr. Bergrin and Mr. Lustberg
2 what is going to come out of Mr. Jimenez' mouth if they
3 cross-examine about this document in a particular way. There
4 may be a way to do it without this coming out; I don't know.
5 But I just want to make sure that everybody is clear on what is
6 going to come out of Mr. Jimenez' mouth.

7 Mr. Jimenez is going to testify, or would testify that
8 of his major concerns in cooperating in this case, given the
9 danger not only from Mr. Bergrin -- and I know Mr. Bergrin
10 contests that -- but other members, including some of the drug
11 co-conspirators that he is going to implicate, are dangerous
12 people, and that he was very concerned about mostly -- somewhat
13 for his safety, but mostly for the safety of his family and his
14 wife and his two children.

15 Now, his first -- he has a son who is a, like his
16 biological son, his and his wife's son. He also has a daughter
17 who is not his biological daughter but is his daughter because,
18 you know, it's his wife's daughter.

19 The daughter has -- the daughter's immigration status
20 was not clear. You cannot get into the Witness Protection
21 Program unless you are a citizen or lawfully here. So there
22 was an issue about whether she could get into the program or
23 not.

24 There was some preliminary discussions about this in
25 which we told both his lawyer and him that we would figure out

1 whether she could get in or not, and part of the issue was her
2 status was unclear. So as we were obtaining more information
3 about the daughter's status and about whether she could get
4 into the WITSEC program.

5 He continued to speak to us, and at one point it
6 looked as if the daughter was not going to be able to get into
7 the program. So we informed Mr. Azzarello of this. He
8 informed Mr. Jimenez. Mr. Jimenez then felt betrayed by his
9 lawyer; that his lawyer had led him down this path and that he
10 now -- you know, the most important thing to him was his family
11 being protected and now he was not going to be protected
12 anymore, and he said, basically, screw it, I want a new lawyer.
13 And he wrote this to his lawyer, he wrote this to the Grievance
14 Committee.

15 Now, the letter itself does not say anything -- and
16 there's a reference to the family and things like that -- but
17 what he says in the letter itself, what he did was he would
18 make notes from his memory about what the various conversations
19 were. And the purpose of this letter was to establish that
20 basically he had been screwed by his lawyer and I guess by --
21 it was mostly by his lawyer in his mind -- but in order to say
22 it he had to say he was screwed by the Government, too.

23 After this was done we learned that his -- a little
24 more information about his daughter's immigration status and
25 the fact that she did qualify, that she was able to get into

1 the program.

2 THE COURT: When did you find that out?

3 MR. GAY: We found that out -- the exact date, Judge,
4 I would have to ask for, I would have to ask the agent. But I
5 know that it occurred after the meeting that he had with Mr.
6 Azzarello. Because, again, see part of the problem, Judge, was
7 that we were relying on his wife to get us documentation --

8 THE COURT: Okay. But wait. Mr. Gay, my
9 understanding is that was written the day before he entered a
10 plea here in this court.

11 MR. GAY: It was -- I don't believe so, Judge. 9/28.

12 THE COURT: And he pled --

13 MR. GAY: He pled on 10 --

14 THE COURT: Well, it was written a few days before.

15 MR. GAY: No, it was very soon beforehand.

16 THE COURT: Right.

17 MR. GAY: I will say this, Judge, that what happened
18 according to what he's saying -- and it does bear out -- is
19 that he learned that his daughter could get into the program,
20 and that was what -- that was why he changed his mind and
21 decided he was then going to cooperate.

22 Now, I'd have to go back and look at the plea, Judge,
23 but I thought the plea was dated early October.

24 THE COURT: Gail?

25 MR. GAY: I think it's the 4th or the 6th.

1 MR. BERGRIN: I can get that.

2 MR. GAY: I know that's not a significant period of
3 time. And probably in the normal course if we would have known
4 this letter was out there we would not have gone through when
5 he did.

6 THE DEPUTY CLERK: Judge, October 6th.

7 THE COURT: 2nd?

8 THE DEPUTY CLERK: 6th.

9 MR. GAY: All right. Now, we were aware from
10 discussing with his counsel that he had a meeting with his
11 counsel in which he said, forget about it, I'm not doing this
12 anymore, I'm going to -- you know -- but we were -- we didn't
13 find out until -- obviously we didn't find out until today
14 about this letter, and I think his lawyer just found out bit
15 recently, too. I don't know.

16 So, Judge, the reason I'm bringing this up mostly is
17 because I want to make sure that Mr. Bergrin, who we had
18 already discussed this earlier, that one of the Giglio things,
19 disclosures was that we had offered to make a WITSEC
20 application for Mr. Jimenez' family, and that we agreed that we
21 would not bring that out unless the Defense was going to cross
22 on it. And the Defense said they were not going to cross on
23 it. So we did not bring it out and we still don't intend to
24 bring it out. But I am just -- again, this is important
25 because the answer that's going to come out of his mouth if

1 this is gone into on cross-examination is likely going to be
2 some version of what I just told you and, you know, perhaps not
3 as articulate at this time, but it's going -- that's what's
4 going to come out of his mouth.

5 MR. LUSTBERG: Okay. Judge, obviously we just got --
6 Mr. Bergrin had literally 30 seconds before the Court came out.
7 We just need a little time to reflect on it. And we understand
8 the concern, but it may be that we just need a little more time
9 to think about how to handle this. This is a delicate issue.

10 THE COURT: Is he going to say his concern included
11 Paul Bergrin?

12 MR. GAY: Well, I mean --

13 THE COURT: He had a concern?

14 MR. GAY: He had a concern for his safety. I mean, I
15 think the concern -- look, I didn't ask him that specifically,
16 Judge. But I can tell you that based on my understanding, he
17 had some concern for Paul, but the vast majority of his concern
18 was for the drug gang that he was going to be implicating as
19 well. So I think that -- I don't know that -- I mean, I could
20 certainly tailor it so that if you wanted me to walk through
21 this or if you had -- I mean, we could do something to make it
22 come out that he was concerned about the drug-dealing group.

23 MR. BERGRIN: The problem is we have a 302, and the
24 302 says they ask him: Do you have any fears or concerns for
25 your safety and your family's safety, and in the 302 it says

1 "no."

2 MR. LUSTBERG: With regard to you.

3 MR. BERGRIN: With regard to me.

4 MR. GAY: Well, no.

5 MR. BERGRIN: I'm sorry, I don't mean to cut you off.

6 I really apologize, Mr. Gay.

7 MR. GAY: My fault.

8 MR. BERGRIN: It's almost like an intimidation factor,
9 Judge. If you ask him these questions or go into this line of
10 questioning, that absolutely affects his credibility because he
11 makes some very heavy allegations. And I just reviewed it for
12 like ten seconds. But he makes some very serious allegations
13 against Mr. Gay and the agents in the case also, Judge, in
14 reference to what they promised him. The agent told him that
15 she's a very good friend of John Gay and --

16 THE COURT: I read it.

17 MR. BERGRIN: So I don't have to go into the
18 substance.

19 THE COURT: No, I read it and it's -- it's his
20 statement to an Attorney Grievance Committee, and it does say a
21 lot of things in there about this whole process, about how he
22 got here that would be of certain interest, I'm sure, to the
23 Defense.

24 Do you know -- I'm asking you: Do you know if he's
25 going to say Paul Bergrin, and after he already told the 302 --

1 and the FBI Agent?

2 MR. GAY: I don't know that he'll be saying that,
3 Judge. But the only -- I just wanted to raise this because
4 I -- I mean he may or may not say that. I know that, you know,
5 his main concern is not Mr. Bergrin.

6 THE COURT: All right.

7 MR. GAY: But if you were to ask him the question:
8 "Do you have any fear of Mr. Bergrin," I think he's going to
9 say he has some at least.

10 THE COURT: At that time he was a brother-in-law or,
11 you know, close to Paul, he was working for Paul. Paul was
12 helping him?

13 MR. GAY: Absolutely.

14 THE COURT: Paul never made any -- Mr. Bergrin I don't
15 think ever -- there's no evidence he ever made any threats
16 against him?

17 MR. GAY: No.

18 THE COURT: Did he continue to work there for a while?

19 MR. GAY: Well, he -- at this point, Judge, when he
20 writes the letter and before that -- I forget the exact date --
21 but he gets locked up again, and Paul --

22 THE COURT: No, after this meeting at Isabella's.

23 MR. GAY: Sure, he worked for him for a number of
24 years.

25 THE COURT: Well --

1 MR. GAY: Judge, there's no --

2 THE COURT: -- you did what you had to do. You
3 represented what you think might come out.

4 MR. LUSTBERG: Yeah.

5 MR. GAY: Yes.

6 MR. LUSTBERG: Look, obviously we haven't talked about
7 it thoroughly. But obviously --

8 THE COURT: You have more direct. Right?

9 MR. LUSTBERG: This is certainly something we need to
10 cross on.

11 THE COURT: It's up to you. I'm not telling you what
12 to do, but if he's told an agent in the 302 that he wasn't
13 afraid of Paul, there were no threats by Paul, and if he now
14 wants to say, yes, he was threatened by Paul -- you know, I
15 mean that's up to him.

16 MR. GAY: Yeah. I'm not suggesting he's going to say
17 that, Judge, just to be clear. I just want to make sure that
18 he's clearly afraid.

19 MR. LUSTBERG: We appreciate the notice.

20 THE COURT: No, no, he was afraid, and that was one of
21 his motivation factors for cooperating, was to get into a
22 protection program.

23 MR. GAY: Well, yes. But more importantly, Judge, the
24 purpose of the letter is that the reason why he wrote this
25 letter is because he felt that the rug had been pulled out from

1 underneath him and he was not going to get the protection for
2 his family from --

3 THE COURT: You just know that from interviewing him a
4 few minutes ago?

5 MR. GAY: Yes, yes absolutely.

6 MR. LUSTBERG: Because he doesn't say that in there.

7 MR. GAY: And that's part of the reason I wanted to
8 raise this. Because I know when you're reading this over
9 that's not coming out. So I didn't want -- what I didn't want
10 to have happen was you guys see this as a fruitful line of
11 cross-examination and what comes out of his mind is something
12 you guys aren't expecting to hear.

13 MR. LUSTBERG: We appreciate the notice.

14 MR. GAY: Okay.

15 MR. LUSTBERG: And will be guided accordingly.

16 MR. BERGRIN: Judge, can I ask this of the Court and
17 also an indulgence, especially since we have a jury: Maybe we
18 could finish up the direct examination of Mr. Jimenez. I could
19 have overnight to work on the cross-examination.

20 THE COURT: We'll see, Mr. Bergrin, we'll see. Let's
21 finish up the direct and let's see. But be prepared to go
22 forward with some across if you have to.

23 MR. GAY: Okay. Thanks Judge.

24 One more thing Judge. In light of this letter, I had
25 intended to on my direct to very briefly say: Did you meet

1 with the FBI? Did you initially tell them lies? And did you
2 get a lawyer? And did you later come in and proffer after
3 that?

4 MR. LUSTBERG: No problem.

5 MR. GAY: I'm going to just request the ability to
6 lead him because I don't want -- I know we just had this
7 discussion, I hope you guys are okay with that -- but I really
8 would like to be able to lead him through this so nothing comes
9 out that you guys are not going to -- and I'm just going to
10 simply say: Did you have a discussion with the FBI?

11 Yes.

12 Did you tell them things that were not true in the
13 first meeting?

14 Yes.

15 Did you have a subsequent meeting with them?

16 Yes.

17 Did you tell them things that were not true?

18 Yes, I did.

19 Did you get a lawyer?

20 Yes, I did.

21 did you subsequently come in and have additional
22 meetings with, you know, your lawyer, with the Government?

23 Yes.

24 And did you, you know...

25 MR. LUSTBERG: I don't even think that's leading, but

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Criminal No. 2:09-cr-00369-WJM

UNITED STATES OF AMERICA, :
: TRANSCRIPT OF PROCEEDINGS
v. : - Trial -
:
PAUL W. BERGRIN, :
:
Defendant :
- - - - -X

Newark, New Jersey
October 20, 2011

B E F O R E:

THE HONORABLE WILLIAM J. MARTINI,
UNITED STATES DISTRICT JUDGE,
and a Jury

A P P E A R A N C E S:

UNITED STATES ATTORNEY'S OFFICE

BY: JOHN GAY

JOSEPH N. MINISH

STEVEN G. SANDERS

Assistant U.S. Attorneys

For the Government

PAUL W. BERGRIN, Defendant, Pro Se

- and -

GIBBONS PC

BY: LAWRENCE S. LUSTBERG, ESQ., Standby Counsel

AMANDA B. PROTESS, ESQ.

For Defendant Paul W. Bergrin

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
SHAWN BROKOS				
By Mr. Bergrin		9 (con't)		51
By Mr. Minish			26	
RAMON JIMENEZ				
By Mr. Gay	76/137			
By Mr. Bergrin		177		

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1 October 20, 2011

2 (Trial resumes - Jury not present.)

3 THE COURT: Good morning. Be seated. I'm sorry. I'm
4 sorry.

5 Good morning.

6 MR. LUSTBERG: Good morning, Judge.

7 THE COURT: I guess we wanted -- I'm sorry for the
8 delay. Mr. Bergrin wasn't brought up until just recently.

9 You were in the courthouse, Mr. Bergrin. Correct?

10 MR. BERGRIN: Yes. I've been here since about 7:30,
11 sir.

12 THE COURT: Okay.

13 THE DEPUTY CLERK: It was my misunderstanding.

14 THE COURT: It was our misunderstanding, we didn't
15 realize he was here. I thought he was but -- okay.

16 I think, Mr. Gay, you wanted to address the Court for
17 a few moments before --

18 MR. GAY: Yes, Judge.

19 THE COURT: Don't we have -- is there going to be --
20 Mr. Bergrin, you have some further cross-examination of this
21 Agent. Correct?

22 MR. BERGRIN: Yes, your Honor.

23 THE COURT: How long do you think that will be?

24 MR. BERGRIN: Not long, Judge, maybe --

25 THE COURT: And you have some redirect, or Mr. Minish

1 does?

2 MR. GAY: Mr. Minish has some redirect, yes, Judge.

3 What I'd like to address is really two things. The
4 first relates to Ramon Jimenez, and I think we worked out most
5 of the issues with that. But the main thing, Judge, is Yolanda
6 Jauregui I know is going on later, may go on later today
7 depending upon how the cross-examination of Mr. Jimenez goes,
8 and there are some relative -- well, fairly significant issues
9 relating to cross-examination with Yolanda Jauregui. So I
10 wanted to make sure we have an opportunity to address them. I
11 know that right now may not be the exact time to do it but we
12 wanted to set aside a schedule now so that we can both discuss
13 it.

14 THE COURT: Okay.

15 MR. GAY: Regarding Ramon Jimenez, Mr. Lustberg, Mr.
16 Bergrin, and I were able to work out most of the issues but it
17 does not look like we're going to be able to work out all of
18 the issues with respect to --.

19 THE COURT: Let's get started. Let's finish the Agent
20 here.

21 Do you have any issues with respect to Mr. Jimenez?

22 MR. LUSTBERG: No. Honestly, I think we worked those
23 out so I think we're in good shape with that but we do need to
24 address the Court on a significant issue --

25 THE COURT: Okay.

1 MR. LUSTBERG: -- with Ms. Jauregui.

2 THE COURT: It sounds like most of the morning we'll
3 be involved with this Agent still, and then Jimenez.

4 MR. LUSTBERG: I think that will go into the afternoon
5 as well certainly.

6 THE COURT: Then why don't we do that.

7 MR. GAY: She may or may not get on today but I just
8 wanted to make sure we've got the issues addressed before she
9 goes on, is my main concern.

10 THE COURT: All right. Mr. Minish, did you have a
11 chance to find that -- if there is a 302 report regarding the
12 Agent's account of the disposal of the melted down gun and
13 clothes?

14 MR. MINISH: It's two different issues, Judge. The
15 melted down gun, the Government had provided -- the Defense has
16 acknowledged they received a copy of it. With respect to the
17 clothes she was not in fact a 302, there were notes. Those
18 notes were provided last night to Defense Counsel.

19 THE COURT: There were notes?

20 MR. MINISH: There were notes.

21 THE COURT: But not a 302 report?

22 MR. MINISH: That's correct.

23 By the way, the reason I got upset with you, Mr.
24 Minish, is -- you know, when you heard her talking about, you
25 know, she believed there was a 302 report, she said it several

1 times, and then when I asked you -- and then the Defendant said
2 they didn't have it, and I asked you if there was one, your
3 answer was: Well, it's in these books, Judge, and something
4 along the line of, well, you know, it's -- I don't know, it's
5 in these books.

6 That's an inappropriate answer. All you had to do was
7 simply state: Judge, I don't have a recollection but I
8 certainly will take a few minutes at the recess and look for
9 it.

10 But for the Government to stand up and say: It's over
11 there --

12 MR. MINISH: Judge --

13 THE COURT: They're your books, they're your exhibits
14 and it was embarrassing, quite frankly, to you I think. That's
15 all.

16 MR. MINISH: Judge, again, I certainly don't want to
17 relive the whole thing, but I think if your Honor checks the
18 transcript, initially it was: "I don't know, Judge." And I
19 probably should have followed that up with, "I don't know. I
20 will look for it."

21 THE COURT: Exactly, Mr. Minish.

22 MR. MINISH: But my answer was not to reference those
23 books, my answer was that I don't know and that was me being
24 honest with the Court.

25 THE COURT: But then you did -- somewhere in that

1 transcript you then said: Well, they're over -- look at all
2 those books.

3 They're your books. They're your exhibits. You're
4 not -- you know, your not a neophyte here, all you had to do
5 was stand up and say: Judge, I don't have a recollection but I
6 certainly will take, you know, the chance to see. I don't have
7 a recollection, that's all, and I will make an effort to see if
8 it exists.

9 That would have been it. But to just say -- I believe
10 it was -- but, you know -- all right, let's go forward.

11 So we'll represent that there was a 302 as to the
12 gun --

13 MR. MINISH: I don't know if there was a debate over
14 that, Judge.

15 MR. LUSTBERG: It was just about the clothing really
16 on cross.

17 THE COURT: I thought she mentioned -- well, she did
18 say the gun was disposed of with the clothes in that bin.
19 Correct?

20 MR. MINISH: Yes.

21 MR. LUSTBERG: Right. But what Mr. Bergrin was
22 referencing was that there was no 302 with respect to the
23 clothing, and that turned out to be correct. But I should say
24 Mr. Minish promptly last night sent us the notes, the FBI's
25 notes with respect do that issue, so we do have those.

1 Thank you.

2 DIRECT EXAMINATION

3 BY MR. GAY:

4 Q Mr. Jimenez, how old are you?

5 A 41.

6 Q Where were you born?

7 A Newark.

8 Q Have you spent most of your adult -- most of your life in
9 Newark?

10 A Correct.

11 Q Generally, where have you lived in Newark?

12 A In the North Side, Mount Prospect, Summer Avenue, Verona
13 and Broadway, Burnett. You know, them parts.

14 Q Mostly in the north part of Newark?

15 A Exactly.

16 Q Briefly describe what jobs you have held.

17 A Carwash, I did movement, a movement company thing,
18 warehouse, security guard and worked for a law firm.

19 Q Okay. Which law firm was that?

20 A 572 Market Street.

21 Q Was that for Paul Bergrin?

22 A Correct.

23 Q Now, did you also get engaged in selling drugs?

24 A Yes.

25 Q Approximately how old were you when you began selling

1 drugs?

2 A About 16.

3 Q Briefly describe, what drug did you say sell at that time?

4 A Codeines. Codeine.

5 Q And how long did you sell drug -- that codeine for?

6 Approximately how long; from what age to what age?

7 A From about 16 to about to 18. Between 18 --

8 Q How often did you sell drugs during that time frame?

9 A Twice a week.

10 Q Mr. Jimenez, in or about 1989, did you get arrested for a
11 robbery in New York?

12 A Correct.

13 Q Did you later plead guilty to first degree robbery in New
14 York State Court in connection with that charge?

15 A Yes.

16 Q Did you receive a sentence of two to four years in State
17 Prison?

18 A Correct.

19 Q Do you recall when you got released from jail on that
20 charge?

21 A Some time in 90 -- '91 I think it was.

22 Q Could it have been November of 1991?

23 A Correct.

24 Q What did you do when you got out of jail at that time?

25 A I started looking for jobs, signing applications and that's

1 basically when I was doing.

2 Q Did you ultimately connect with a person you knew as Papao?

3 A Yes.

4 Q Briefly describe what happened then.

5 A Well, the time I was at the -- I was on the corner waiting
6 for a bus going downtown, Papao comes by with a car, he asked
7 me where I was going. I told him I was going downtown, sign
8 some applications. So that he gave me a ride.

9 Q So what happened then?

10 A He offered me a position in one of his drug things.

11 Q Okay. So Papao was a drug dealer?

12 A Right.

13 Q And he offered you a position in his organization with his
14 business?

15 A Correct.

16 Q What was the position he offered you.

17 A To make sure the -- the delivery gets there safe.

18 Q Can you briefly, briefly describe Papao's business?

19 A He was -- he would get the drugs, put it in a bag, put it
20 in the car, and basically I have to make sure it gets to a
21 certain location, to a stash house.

22 Q What is a stash house?

23 A A stash house is a place where you keep the drugs at, break
24 it down, and then from there you take it out, distribute it.

25 Q And that was part of Papao's business?

1 A Correct.

2 Q Did you get paid in connection with working for Papao?

3 A Yes.

4 Q Do you remember approximately how much you were getting
5 paid at that time?

6 A Between seven to \$800 a week.

7 Q Did there come a time later when Papao increased your
8 salary, so to speak?

9 A Yes.

10 Q How much were you making at that point?

11 A 1500.

12 Q Other than what you just described, did you do anything
13 else for Papao in connection with the drug business?

14 A Yes.

15 Q Let me focus in on 1992. Did you get arrested in
16 Pennsylvania in 1992?

17 A Correct.

18 Q And were you working for Papao when you got arrested?

19 A Correct.

20 Q Briefly describe what happened.

21 A I was -- I was to do basically the same thing, make sure
22 the drug gets to the place safe, and when -- when that was
23 happening, we was going to Pennsylvania, we got pulled over in
24 Pennsylvania and got arrested for the drugs that was in the
25 car.

1 Q So were you charged eventually with those drugs?

2 A Correct.

3 Q What happened with that case?

4 A I took it to trial and lost.

5 Q Why did you take it to trial?

6 A I felt like I could win the case.

7 Q Were you in fact guilty of the crime?

8 A Correct.

9 Q But nonetheless you took it to trial?

10 A Correct.

11 Q Were you convicted?

12 A Yes.

13 Q Did you receive a sentence?

14 A Yes.

15 Q How long -- what was the sentence you received in
16 connection with that conviction?

17 A Twenty-three years.

18 Q That would be in Pennsylvania State Prison?

19 A Correct.

20 Q How long did you actually serve in State Prison for that
21 conviction?

22 A Ten years.

23 Q Did you also plead guilty in 1993 to receiving stolen
24 property?

25 A Yes.

1 Q And was that for an arrest that took place in 1989?

2 A Correct.

3 Q So, in other words, you pled guilty to that while you were
4 serving your sentence in Pennsylvania, but the actual incident
5 you pled guilty to occurred prior to your conviction in
6 Pennsylvania?

7 A Correct.

8 Q Did you get out of jail on the Pennsylvania conviction?

9 A Yes.

10 Q Do you remember approximately what date it was that you got
11 out of jail?

12 A Some time in 2002.

13 Q Is it possible it's around May of 2002?

14 A May.

15 Q On April 27th of 2004, did you plead guilty to a contempt
16 of court violation?

17 A Yes.

18 Q On about June 23rd, 2010, did plead guilty to a hindering
19 apprehension charge?

20 A Yes.

21 Q And in or about October 13th of 2009, did you plead guilty
22 to distributing cocaine?

23 A Correct.

24 Q Did you receive a sentence in connection with that
25 conviction?

1 A Yes.

2 Q Was that a five-year sentence?

3 A Correct.

4 Q Mr. Jimenez, you've been arrested by the police a number of
5 times as you just testified. Is that correct?

6 A Correct.

7 Q Did you ever use a fake name when you were arrested by the
8 police?

9 A Yes.

10 Q When you got out of jail in 2002, what did you start doing?

11 A I started working for Paul Bergrin.

12 Q How did you get that job?

13 A Through my sister and Paul.

14 MR. GAY: Your Honor, I'm going to show the witness
15 Government Exhibit 3073 which the Defense has a copy of.

16 THE COURT: Okay.

17 Q Mr. Jimenez, do you recognize who that is?

18 A It's my sister.

19 Q And what's your sister's name?

20 A Yolanda.

21 Q The last name?

22 A Jauregui.

23 MR. GAY: Your Honor, I ask that this get published to
24 the jury.

25 THE COURT: There's no objection, it's in evidence.

1 MR. BERGRIN: No, there's no objection,

2 (Government Exhibit 3073 is received in evidence.)

3 Q What is your sister's relationship to Mr. Bergrin?

4 A Girlfriend.

5 Q What type of work did you do in Paul Bergrin's office?

6 A I would file papers, get the files ready for the -- for him
7 and for other lawyers, and do a little research, breakdowns of
8 the cases.

9 Q What days did you work?

10 A Five days a week.

11 Q Monday through Friday?

12 A Yes.

13 Q Did you ever work on weekends?

14 A No.

15 Q What hours did you work?

16 A From 8:00 to 5:30.

17 Q Did you ever work hours in addition to 8:00 to 530?

18 A Yes.

19 Q Where was the office located that you worked in at that
20 time in 2002?

21 A 572 Market Street.

22 Q Is that here in Newark?

23 A Correct.

24 Q Can you briefly describe the physical structure of the
25 office, the building, the office building?

1 A It's a two-story building; the windows in the front and the
2 conference room in the back. On the first floor, far right is
3 the mail room, the center is the reception area, and in back of
4 that is a secretary area.

5 MR. GAY: With the Court's permission, I'm going show
6 the witness Government Exhibit 3282.

7 THE COURT: All right.

8 Q Do you recognize that, Mr. Jimenez?

9 A Yes.

10 Q What is that a photograph of?

11 A 572 Market Street.

12 Q Is it a fair and accurate depiction of 572 Market Street as
13 you knew it, the building itself?

14 A Correct.

15 MR. GAY: Your Honor, I would ask that this be moved
16 into evidence.

17 THE COURT: Without objection,

18 MR. BERGRIN: There is no objection, Judge.

19 THE COURT: It's in evidence.

20 (Government Exhibit 3282 is received in evidence.)

21 MR. GAY: We could publish this one to the jury.

22 (An exhibit is published to the Jury.)

23 Q Now, Mr. Jimenez, what was on the first floor of 572 Market
24 Street? Can you give a brief description of that?

25 A To the far left is the conference room on the first floor;

1 the middle was the reception area; and the far right is the
2 mail room. Upstairs is -- on the far left, to the right -- I
3 mean far left to the front is Anthony Pope's office; above the
4 reception area is Paul Bergrin's office; and the far right is
5 Annette Verdesco's office.

6 Q So on the second floor was primarily lawyers working. Is
7 that Correct?

8 A Yes.

9 Q And on the first floor would have buy been primarily
10 support staff?

11 A Correct.

12 Q What lawyers were working on the second floor do you
13 recall, at the time?

14 A Paul Bergrin, and Pope, Annette Verdesco; Gary Cavelli;
15 Artie Arujo (phonetic); and Ron Sampson.

16 Q What about the support staff that you said that they
17 generally worked on the first floor. Is that correct?

18 A Correct.

19 Q Do you recall anybody else from the support staff who
20 worked on the first floor other than you?

21 A Marisol, Rosemary, Gladys, Gloria.

22 Q Okay, that's fine, Mr. Jimenez. That's what you remember
23 today. Right?

24 A Right.

25 Q Okay. Where was your office within the structure?

- 1 A Towards -- all the -- the back, far to the back.
- 2 Q That would have been on the first floor. Is that correct?
- 3 A Correct.
- 4 Q Where was Paul Bergrin's office within the structure?
- 5 A Above the reception area in the front.
- 6 Q That would have been on the second floor?
- 7 A Second floor.
- 8 Q What was Paul Bergrin's position within the office, if you
- 9 know?
- 10 A He was the boss.
- 11 Q Do you know what type of law Mr. Bergrin practiced?
- 12 A Military and criminal.
- 13 Q What was his primary area of practice, if you know?
- 14 A Criminal.
- 15 Q Who assigned you work when you were working at the office?
- 16 A Paul Bergrin.
- 17 Q What percentage of your workload would you say you did on
- 18 Paul Bergrin's cases?
- 19 A Forty -- I mean, it was 60/40.
- 20 Q Sixty percent being what?
- 21 A Meaning that I -- that's what I would -- that's the
- 22 percentage I would, you know, put into his work.
- 23 Q So you worked -- 60 percent of your work you spent on Paul
- 24 Bergrin's cases?
- 25 A Correct.

1 Q And the other 40 percent would have been doing work for
2 some of the other lawyers in the office?

3 A Right.

4 Q Can you describe briefly the types of jobs that you had
5 while you were working in Paul Bergrin's office?

6 A I was filing papers, making sure the files were being -- in
7 everybody's office, the caseloads that they had to do in court,
8 at times Paul would ask me to give him a little breakdown on
9 something about a case, and, oh, prepare it for trial.

10 Q Did you ever sit in on client meetings?

11 A Yes.

12 Q Can you briefly describe the clientele of the office, what
13 types of people came to the office?

14 A Basically people -- clients that was charged with criminal
15 offense, and sometimes -- basically criminal offenses.

16 Q Did you ever meet any clients while you were there?

17 A Yes.

18 Q Did you ever meet a client named Hak?

19 A Yes.

20 MR. GAY: I'm going to show Government Exhibit 2258 to
21 the witness.

22 Q Mr. Jimenez, do you recognize the person depicted in that
23 photograph?

24 A Yes.

25 Q Who is that?

1 A That's Hak.

2 Q Did you later learn Hak's true name?

3 A Correct.

4 Q What would that be?

5 A Hakeem Curry.

6 Q Okay.

7 MR. GAY: Your Honor, I'm going to ask that Government
8 Exhibit 2258 be entered into evidence at this time.

9 THE COURT: All right. Without objection it's in
10 evidence.

11 MR. BERGRIN: There's no objection, Judge.

12 (Government Exhibit 2258 is received in evidence.)

13 MR. GAY: Can you publish it to the jury, please.

14 (An exhibit is published to the Jury.)

15 Q Now, after you began working in Paul Bergrin's office, how
16 long was it, approximately, before you first saw Mr. Curry?

17 A About two months.

18 Q And when you saw him it was in the office?

19 A Correct.

20 Q Did you learn anything about Mr. Curry while you were
21 working in Paul Bergrin's office?

22 A Yes.

23 Q What is it that you learned?

24 A That he was a high roller, big time drug dealer.

25 Q Did you ever speak to Mr. Bergrin about Mr. Curry?

1 A Yes.

2 Q And what if anything did Mr. Bergrin tell you about Mr.
3 Curry?

4 A He said it's one of his best clients.

5 Q Did he say anything else about Mr. Curry?

6 A Yes.

7 Q What did he say?

8 A That he was one of the big guys in Newark.

9 Q One of the "big guys," meaning what?

10 A Drug dealer.

11 Q How often did you see Mr. Curry in Paul Bergrin's office?

12 A Like once every two weeks in the beginning, something like
13 that.

14 Q After you saw Mr. Curry, did you come up with a plan?

15 A Correct.

16 Q What was that plan?

17 A The plan was to put something together, see if he was
18 interested in -- going to buy some weight.

19 Q Now, when you say "put something together," what would that
20 "something" be?

21 A A drug deal together.

22 Q When you say "buying some weight," what would weight be?

23 A Large amount, quantity -- a large quantity, amount of
24 drugs.

25 Q Was there a particular drug you had in mind?

1 A Yes.

2 Q What was that?

3 A Cocaine.

4 Q Now, did you yourself have cocaine, "weight," at that time?

5 A No.

6 Q So what was your plan with respect to obtaining the cocaine
7 at that time?

8 A I knew somebody and I was going to go talk to him.

9 Q Who was that that you knew?

10 A Changa.

11 Q Do you know Changa's real name?

12 A No.

13 Q I'm going to show you Government Exhibit 3524. Do you
14 recognize the person depicted in that photograph?

15 A Yes.

16 Q Who is it?

17 A Changa.

18 MR. GAY: I'd ask, your Honor, that 3524 be entered
19 into evidence at this time.

20 MR. BERGRIN: There's no objection, Judge.

21 THE COURT: Okay.

22 (Government Exhibit 3524 is received in evidence.)

23 MR. GAY: If we can publish it for the jury, too
24 please.

25 THE COURT: It's in evidence.

1 (An exhibit is published to the Jury.)

2 Q Mr. Jimenez, how do you know Changa?

3 A He's a long time friend the family.

4 Q Do you know what Changa did for a living?

5 A Yes.

6 Q What did he do?

7 A Sell drugs.

8 Q What quantities of drugs did you sell?

9 A Large.

10 Q "Large," meaning what?

11 A Meaning kilos.

12 Q Multiple kilos?

13 A Multiple kilos.

14 Q Okay. What level of kilos would he sell?

15 A Ten, better.

16 Q "Ten or better," meaning what?

17 A Ten -- ten keys or more.

18 Q Now, you came up with this plan that you were going to
19 introduce -- well, withdraw the question. Explain how that fit
20 into your plan.

21 A Changa was the supplier. So my plan was to talk to Hakeem,
22 see if he would agree to something, then I would go back to
23 Changa and talk to him to see if he could supply me with what I
24 need.

25 Q Can you briefly describe what the difference is between

1 what Changa does in the drug business and what Hakeem Curry did
2 in the drug business, as you understood it then.

3 MR. BERGRIN: I have to object, Judge, based on his
4 knowledge.

5 THE COURT: All right.

6 Go ahead, I'll allow it.

7 Q Do you want me to ask the question again?

8 A No.

9 Q Okay, go ahead.

10 A Changa was a supplier, Hakeem was the distributor.

11 Q And that's why you thought if you hooked these two guys up
12 together it would be a match?

13 A Correct.

14 Q Were you expecting to get anything out of this?

15 A Correct.

16 Q What?

17 A A couple thousand, a few thousands.

18 Q And how were you expecting to make your money off of this,
19 if you can describe it.

20 A By adding another point to it. A point is another thousand
21 on each key.

22 Q So for every kilogram of cocaine that Changa sold to Hakeem
23 Curry, you expected to make a thousand dollars?

24 A Correct.

25 Q Did you eventually approach Hakeem Curry?

1 A Correct.

2 Q Can you briefly describe -- well, first of all, how long
3 after you began working in Mr. Bergrin's office did you
4 approach Hakeem Curry?

5 A Less than a year.

6 Q Can you briefly describe what you did when you approached
7 Hakeem Curry?

8 A He was -- he came in and --

9 Q When you say "he came in," let's back up for a minute.

10 Where were you at the time you first approached Hakeem
11 Curry?

12 A I was in the office by the conference room.

13 Q That's Paul Bergrin's office?

14 A Correct.

15 Q Okay.

16 A I seen Hakeem --

17 Q Described what happened.

18 A I seen Hakeem Curry coming in, and he went through the
19 conference room, started talking to the reception area -- to
20 the reception, I believe it was Gladys or Marisol. And I told
21 Hakeem Curry if he could step into this conference room so I
22 could talk to him for a minute.

23 Q What did he do?

24 A He agreed.

25 Q Can you describe what happened next?

1 A Then I sat down, we sat -- well, I sat down; he stood up.
2 And then I told him, if he knew anybody that was interested in
3 buying some weight. And --

4 Q What was "weight"?

5 A Weight, means cocaine, large amount of cocaine --

6 Q What was his response?

7 A -- quantity of coke.

8 His response was like, yeah. You know, he knows
9 somebody and that he was interested.

10 Q What happened next during the conversation?

11 A Then he says, if I could supply him or get him 25 keys or
12 better, then we could talk.

13 Q What did you understand "25 keys or better" to mean?

14 A It would be 25, either 25 or more.

15 Q Twenty-five what?

16 A Kilos.

17 Q Of what?

18 A Cocaine.

19 Q What was your response?

20 A My response was, like, I got -- I'll get back to you. I
21 have to get back to you on that.

22 Q Why did you give him that response?

23 A Because I didn't know he was going to go that high.

24 Q "That high," meaning what?

25 A The cocaine on the kilos.

1 Q What were you expecting before you spoke to him about the
2 amount of drugs he might be asking for?

3 A Between eight and ten.

4 Q Kilograms of cocaine?

5 A Correct.

6 Q So when he said 25 or better, what did -- why did that
7 create a problem?

8 A It throw me back a little bit because it was -- it's a lot,
9 and it's something that, you know, I wasn't sure of.

10 Q You weren't sure of what?

11 A Of get -- that I could get my hands on 25.

12 Q Okay. Now, what else happened after that in the meeting?

13 A He said that he needs a new supplier, he looking for a new
14 source.

15 And we exchanged numbers. And I told him I'd call him
16 as soon as I find out if I can get my hands on that type of
17 weight.

18 Q Now, did he mention anything about what might happen if
19 this initial transaction was successful?

20 A Right.

21 Q What did he say?

22 A He said if this goes through good, he'll get 50 next time.

23 Q Fifty what?

24 A Fifty keys.

25 Q Of what?

1 Q Now, at the conclusion of the meeting you said that you and
2 Mr. Curry exchanged numbers. Is that correct?

3 A Correct.

4 Q That would be telephone numbers?

5 A Correct.

6 Q What was the reason for that?

7 A To be in touch to see to find out, to see if everything is
8 good.

9 Q "Everything good," meaning what?

10 A If everything was good on my side, if it was a go, if I
11 could, you know -- was able to get my hands on that type of --
12 type of weight on the cocaine.

13 Q Meaning 25 kilograms or more?

14 A Correct.

15 Q What did you do after the meeting with Mr. Curry?

16 A Left. We just left it like that. After we talked and we
17 exchanged numbers, finished talking, we left.

18 Paul came in at the time, Curry went upstairs, and I
19 went to do what I had to do.

20 Q Did you do anything after you left work that day?

21 A Yes.

22 Q What did you do?

23 A I contacted Changa.

24 Q And what happened then?

25 A And we met at the bar.

1 Q Okay. What bar would that be?

2 A Broadway and Verona.

3 Q Do you remember how it was that you came to meet Changa at
4 the bar.

5 A I called him up and he told me he would meet me at the bar.

6 Q I'm going to show you Government Exhibit 3258 for
7 identification. Do you recognize what's depicted in that
8 photograph?

9 A Yes.

10 Q What is that?

11 A That's the corner bar, Broadway and Verona.

12 Q That's the one that you met Changa in?

13 A Correct.

14 Q And is that a fair and accurate depiction of the bar as it
15 existed, the outside of the bar as it existed when you had met
16 Changa?

17 A Correct.

18 MR. GAY: Your Honor, I would ask that Government
19 Exhibit 3258 be entered into evidence.

20 MR. BERGRIN: I have no objection whatsoever, Judge.

21 THE COURT: Okay. It's in evidence.

22 MR. GAY: We'll publish it to the jury, please.

23 (Government Exhibit 3258 is received in evidence.)

24 (An exhibit is published to the Jury.)

25 Q Mr. Jimenez, that bar that's now up on the screen, that's

1 where you met Changa. Is that correct?

2 A Correct.

3 Q Can you briefly describe what happened at that meeting?

4 A I spoke to Changa and I told Changa that I have somebody
5 that was interested in buying 25 keys.

6 Q What did Changa say in response to that?

7 A Changa was surprised, he looked at me crazy, and he said
8 that --

9 MR. BERGRIN: Objection as to what Changa said.

10 MR. GAY: Your Honor, if you want a sidebar --

11 THE COURT: I'll hear you at sidebar briefly.

12 (At the sidebar.)

13 THE COURT: What's the objection?

14 MR. BERGRIN: I'm going to withdraw my objection.

15 THE COURT: It's a co-conspirator's statement.

16 Correct?

17 MR. BERGRIN: Yes. I withdraw the objection.

18 (In open court.)

19 THE COURT: Is overruled. The objection is withdrawn.

20 MR. BERGRIN: Thank you.

21 MR. GAY: May I proceed, your Honor?

22 THE COURT: Yes.

23 BY MR. GAY:

24 Q Mr. Jimenez, what did Changa say in response to your
25 question?

1 A He said, you might be talking to an informant or feds. He
2 said, he was scared. He got shook a little bit. He said,
3 that's feds.

4 Q Did he explain why he thought it might be feds?

5 A Because it was too much.

6 Q Too much what?

7 A Too much weight for somebody to just ask for 25 keys just
8 like that.

9 Q And what was his concern?

10 A His concern was the feds, meaning either an informant or
11 some law informant.

12 Q So that feds could mean law enforcement?

13 A Correct.

14 Q He was concerned about getting caught by law enforcement if
15 he engaged in this type of transaction?

16 A Correct.

17 Q And was that because he believed that this person could
18 have possibly been working for law enforcement?

19 A Correct.

20 Q What did you say in response to that?

21 A I said, man, that's impossible. I know the guy's
22 background already. I've -- I know him very well I told him.

23 Q Did you explain how you knew the guy's background?

24 A Yes.

25 Q What did you say?

1 A I told him I read his file, he's from -- he's one of the
2 clients in the office, and that he deals with that type of
3 weight.

4 Q And when you said "one of the clients in the office," what
5 were you referring to?

6 A Paul Bergrin's office.

7 Q Continue. What did you say?

8 A And he says -- well, then we just started talking some more
9 about the case -- about the -- he wanted to know Hakeem Curry's
10 name.

11 Q Okay. Did you tell him Hakeem Curry's name?

12 A No.

13 Q Okay. During that conversation at all was a name brought
14 up of who the person was that you wanted him to supply with
15 cocaine?

16 A No.

17 Q What was the reason for that?

18 A The reason for that was, because I didn't want -- I didn't
19 want to put -- I didn't want to give him the name because I
20 know that people have the bad habit of trying to go back-door
21 you and going straight to the person and then put you to the
22 side.

23 Q Okay. And "putting you to the side" means what?

24 A I didn't want to lose -- it's going -- it's like going over
25 your head, like going to the top.

1 Q So if somebody went directly to the customer, what could
2 that mean for you as far as whether you were going to make any
3 money off of the deal?

4 A I'd be out of the 25,000.

5 Q Did you discuss any prices with Changa during that meeting?

6 A Yes.

7 Q Please describe.

8 A I told Changa that if he could supply me with that and if
9 he's interested and is fine with that, to give me a good price.

10 Q And what did he say?

11 A He said, 20. He says, all right, he gave me 20,000 on each
12 key.

13 Q So 20 -- the price he gave you was \$20,000 per kilo?

14 A Correct.

15 Q And did you tell him anything about what price you were
16 going to sell them to your client or your person at?

17 A Correct.

18 Q What was that?

19 A Twenty-one.

20 Q \$21,000 per kilogram?

21 A Correct.

22 Q And why was that, that you were going to sell them for
23 more?

24 A Because that's how I make my money.

25 Q You were going to make \$1,000 off each kilogram?

1 did "25 keys" mean?

2 A Twenty-five kilos of cocaine.

3 Q Of what?

4 A Of cocaine.

5 Q So what did you respond to Mr. Curry after he said the
6 price -- and he wanted a better price?

7 A I said the pricing ain't going to go down no more than 21.
8 That's a good price and that's -- that's where it's going to
9 stay.

10 Q What did he reply to you?

11 A He replied to me that if I could come down a little bit.

12 I said no.

13 Then he say he'll get back to me, that he got to get
14 some -- his money was short, that he had to gather up a little
15 bit more money.

16 Q Now, you testified that this took place inside the same
17 conference room as the first meeting. Is that correct?

18 A Correct.

19 Q Was the door to the conference room opened or closed when
20 this meeting, the second meeting with Mr. Curry took place?

21 A It was closed.

22 Q Was there anybody else in the conference room besides you
23 and Mr. Curry?

24 A No.

25 Q Did you believe anybody else could overhear your

1 conversation?

2 A No.

3 Q After that meeting, did you believe Mr. Curry was still
4 interested in purchasing the 25 kilograms of cocaine?

5 A Correct.

6 Q What did you do next?

7 A I went on -- I went on, you know, minding my business in
8 the office.

9 Q So you worked for the balance of the day?

10 A Right.

11 Q What did you do after that?

12 A I went home -- no, I called -- I called Changa. I told
13 Changa to meet up in the bar again.

14 Q And would that be the same bar where you met with Changa
15 the last time?

16 A Correct.

17 Q Okay.

18 MR. GAY: We could publish the photo again.

19 Q Is that the bar that you met with Changa the second time?

20 A Correct.

21 MR. GAY: Again, referring to Government Exhibit 3258,
22 your Honor, for the record.

23 Q What happened at this meeting?

24 A I wanted to make -- I wanted to make sure that Changa
25 could, you know, supply me with the 25, it's going to be there,

1 you know? Not to let me down, because if this guy is going to
2 get the money, I didn't want to, you know, be empty-handed
3 still.

4 Q So what happened then? What did you say to Changa?

5 A So I told Changa: Are you sure you can get me that 25?

6 He said yes.

7 Then we started talking some more. Then I told him
8 who the person was because it was -- when the deal goes down he
9 has to know who the person is then.

10 Q So at that point did you give Changa the name of the person
11 you were going to supply with the cocaine?

12 A Correct.

13 Q Do you remember what you told him?

14 A I told him his name was Hak. They call him Hak in the
15 streets.

16 Q Do you remember mentioning anything about Paul Bergrin's
17 law office at that time?

18 A Correct.

19 Q What did you say?

20 A I told him he's one of the big time drug dealers that --
21 one of Paul Bergrin's clients.

22 Q And what did he say to that?

23 A He was not -- he was like really interested.

24 Q What do you mean by "really interested"?

25 A Like, he was -- now he really was going forward with it,

1 like. He was, like, okay, like more -- more open to the -- to
2 the situation.

3 Q Now, you had mentioned previously that he had expressed
4 concern at the first meeting that this person you were going to
5 introduce to him was going to be a fed.

6 A Correct.

7 Q Did he appear -- what if anything -- did he appear to have
8 that same concern after this conversation?

9 A No.

10 Q What happened at the end of that meeting?

11 A At the end of that meeting, Changa -- we left it like that.
12 Changa told me as soon as he's ready, you will call me and we
13 put it to work.

14 Q Now, and what did that mean, "put it to work"?

15 A That means that when everything is ready on one side, then
16 everything else will fall into place.

17 Q Meaning the deal would take place?

18 A Correct.

19 Q Did you go to work the following day at Paul Bergrin's
20 office?

21 A Correct.

22 Q At some point during that day did you meet with Paul
23 Bergrin?

24 A Correct.

25 Q Briefly describe the circumstances of that.

1 A He called me upstairs to the office and told me -- I closed
2 the door. He asked me if I ever spoke to anybody about making
3 any -- any deals.

4 Q What did you believe that was a reference to at that time?

5 A I believed that that was -- automatically it was Hakeem
6 Curry, in reference to what I was --

7 Q What deal would that be?

8 A The 25 keys.

9 Q What did you respond?

10 A I was shocked. I mean, my response -- I said, yes.

11 Q So you told him that you were going to do a deal with
12 Hakeem Curry?

13 A Correct.

14 Q And what was his response to that?

15 A His response was that if I was to talk to any of his
16 clients, that I got to go through him first.

17 Q And that was in reference to the drug deal?

18 A Correct.

19 MR. LUSTBERG: Judge, we would request an appropriate
20 curative instruction at this time.

21 THE COURT: All right. Do you have another question,
22 Mr. Gay?

23 MR. GAY: Another -- well...

24 THE COURT: Go, go ahead.

25 MR. GAY: Okay. I mean, it's fine if you want to give

1 the instruction now, Judge.

2 THE COURT: No, I will.

3 Ladies and gentlemen, listen closely, if you would,
4 please. You just heard testimony that the Defendant was
5 involved with other persons in a conspiracy to distribute
6 cocaine. Now remember, the Defendant is not on trial for this
7 alleged involvement with a drug conspiracy. You may only
8 consider this evidence for the purpose of deciding whether the
9 Defendant had a motive to commit the acts charged in this
10 Indictment in this trial. Do not consider this evidence for
11 any other purpose. Of course, it is for you to determine
12 whether you believe this evidence, and if you do believe it,
13 whether you accept it for the purpose offered; motive.

14 You may give it such weight as you feel it deserves,
15 but only for the limited purpose that I describe it to you.
16 You may not consider the evidence of these other acts as a
17 substitute for proof that the Defendant committed the crimes
18 charged in this Indictment. You may not consider this evidence
19 as proof that the Defendant has a bad character or a propensity
20 to commit crimes. Specifically, you may not use this evidence
21 to conclude that because the Defendant may have been involved
22 in a drug conspiracy -- and that's for you to determine -- he
23 must also have committed the crimes charged in this Indictment.

24 All right. So I will instruct you on this further
25 during the course of the trial or at the end of the trial. But

1 this evidence with respect to an alleged drug conspiracy
2 involving the Defendant is not what he's on trial for now, and
3 it's only being offered as possible motive for the charges that
4 he's on trial for right here. All right?

5 MR. LUSTBERG: Thank you, Judge.

6 MR. GAY: May I continue, your Honor?

7 THE COURT: Yes.

8 MR. GAY: Thank you.

9 BY MR. GAY:

10 Q Now, Mr. Jimenez, this conversation you just testified
11 about, where did it take place?

12 A Paul Bergrin's office.

13 Q And when you say "his office," you discussed his office a
14 couple of times. Meaning the overall building?

15 A Correct.

16 Q Did this take place in a specific place -- a specific
17 office within that building?

18 A His private office.

19 Q Was the door opened or closed at the time?

20 A It was closed.

21 Q Was there anybody else in the room besides you and Mr.
22 Bergrin when this conversation took place?

23 A No, just me and him.

24 Q Can you describe Mr. Bergrin's demeanor when he was
25 discussing this topic with you?

1 A His regular demeanor, serious.

2 Q What happened after this conversation completed?

3 A I left the office, went downstairs, did what I had to do.

4 Q Continued to do your work?

5 A Continued doing my work.

6 Q Now, what happened after that in connection with any drug
7 business?

8 A After that, a couple of days WENT by, I started to call
9 Hakeem Curry. And he told me -- he picked up the phone, he
10 told me that he had something -- he got something in play right
11 now.

12 Q What did that mean, in your opinion, he had "something in
13 play"?

14 A That means that he has drugs, you know, out there right
15 now, you know. It's, like, if he was -- if I was to tell him
16 the same thing -- you know, it's just a street slang that we
17 understand.

18 Q Explain, Mr. Jimenez. He said he had something in play.
19 How was that going to impact on any deal that you were going to
20 do with Mr. Curry, or how did you understand it to impact on
21 any deal?

22 A Well, my understanding, that as long as he got something in
23 play, until that's done, then, you know, the deal can't go
24 through. So that's -- that was my understanding.

25 Q Now, Mr. Jimenez, can you briefly describe, if a drug

1 dealer receives kilograms of cocaine what happens after that;
2 they then distribute them?

3 A Yes.

4 Q Okay. Do they have to then wait for the money to be
5 collected from that sale before they can purchase new drugs?

6 A Correct.

7 Q So is that what this conversation was about?

8 A That's correct.

9 MR. BERGRIN: Objection, your Honor, to the leading
10 nature and putting words in his mouth.

11 MR. GAY: Withdrawn, Judge.

12 THE COURT: All right.

13 MR. BERGRIN: I ask that it be stricken.

14 THE COURT: No, I won't strike it.

15 But, Mr. Gay, don't lead in this area.

16 MR. GAY: I will not, Judge.

17 BY MR. GAY:

18 Q How long was it that you called Mr. Curry before you
19 finally got through to him?

20 A How long did I call him?

21 Q Yeah. Did you call him one time and he answered the phone,
22 or did you have to do more than that?

23 A No, I had to do more than that.

24 Q Okay. Very briefly describe that.

25 A I called him, like, about four, five times. And --

1 Q What happened those four or five times?

2 A I got the answering service, then I got the other thing
3 that he cannot be reached because he's out of range, you know.

4 Q Now, during the time that you're having this -- trying to
5 reach Mr. Curry, are you still working in Paul Bergrin's
6 office?

7 A Correct.

8 Q And at any time during that time period do you see Changa?

9 A Correct.

10 Q Briefly describe that.

11 A I was in the reception area talking to Gladys, and I seen
12 Changa coming in the office. He says -- I asked him, what is
13 he doing here.

14 And he says that he's here to see Paul for some
15 property, for property or something like that.

16 Q Had you ever seen Changa in the office before?

17 A No.

18 Q Do you know whether Changa and Paul know each other, or did
19 you know whether they knew each other at the time?

20 A I believe Paul probably met Changa through the family
21 members.

22 Q And that would have been through?

23 A My sister.

24 Q Your sister?

25 A Yes.

1 Q But you had never seen Changa in the office prior to that
2 day?

3 A No.

4 Q Do you know whether Changa saw Mr. Bergrin on that day?

5 A Yes.

6 Q Would you briefly describe how you know that.

7 A Gladys went upstairs and let Paul know that -- she called
8 him Jose something -- that he's here.

9 And Paul said -- I guess Paul would tell her to wait a
10 minute or something, to have him wait in the reception area,
11 and I was still talking to Gladys, and she hangs up the phone.

12 Then Paul Bergrin calls back down and he let her know
13 that, tell him to come upstairs.

14 Q What did you see after that?

15 A After that --

16 Q What did you see Changa do after that?

17 A Go upstairs.

18 Q Now, did this take place before you actually had a
19 conversation with Mr. Curry, the one that you talked about --

20 A Yes.

21 Q -- where Mr. Curry said he had something else going on?

22 A Correct.

23 Q Did you later learn that a meeting was going to take place
24 between Paul Bergrin, Hakeem Curry and Changa?

25 A Correct.

1 Q Can you briefly describe how you learned that that meeting
2 was going to take place?

3 A I overheard Paul on the phone that -- well, they called --
4 Hak -- I believe Hakeem called the office, and I was -- I was
5 by the office with Paul. And Gladys was upstairs, and she
6 calls Paul. Paul calls her on the conference speaker and she
7 say, Hak is on the -- on the phone for you.

8 Paul picks up the phone, says, I'll be at the
9 restaurant, and that's how I know.

10 Q Now, was there a time given that they were meeting?

11 A There was a time, but -- I know -- I know there was a time
12 but I just -- I cannot remember exactly the time.

13 Q Okay. Did you understand that the meeting was going to
14 happen later that day?

15 A Correct.

16 Q And it was going to be at the restaurant you said?

17 A Correct.

18 Q Which restaurant was that?

19 A Isabella's.

20 Q What is Isabella's?

21 A It's sort of like a fast foot restaurant.

22 Q Who owns Isabella's, or owned it at the time at least?

23 A Paul Bergrin and Yolanda.

24 Q Your sister Yolanda?

25 A Correct.

1 Q What else did you learn about this meeting, if anything,
2 before the meeting took place I'm saying? Were there any --
3 let me rephrase it. Were there any other telephone
4 conversations that you overheard relating to this meeting?

5 A Yes.

6 Q Briefly describe what you heard.

7 A That as far as Changa, he -- he -- well, at the time he was
8 looking for the phone -- phone number, Changa's phone number.

9 Q "He" is who? Who is look for the phone number?

10 A Paul Bergrin.

11 Q And what happens? How do you know he was looking for a
12 phone number?

13 A He asked me if I knew Changa's phone number.

14 I said, no.

15 Q This was after the conversation that you overheard with Mr.
16 Curry?

17 A I think it was -- I think it was after or before.

18 Q It was around the same time?

19 A It was around the same time.

20 Q Okay. So what happens then? He asks you for the number.
21 And what do you say?

22 A I say I don't have it.

23 Q What happened next?

24 A He got on the phone, I believe he called somebody. I don't
25 know if he was talking to my sister, I'm not sure if he was

1 talking to anybody that I know. But he said that, let Changa
2 know that I be in the restaurant. Something to that nature.

3 Q Okay. And you could -- you overheard this conversation?

4 A Correct.

5 Q You could only hear the one side of it, Mr. Bergrin's side
6 of the conversation?

7 A Right.

8 Q Okay. Now, you talked about these two conversations.
9 Where were you when you overheard these conversations?

10 A Upstairs, second floor, Paul Bergrin's office.

11 Q Were you actually inside the office during these
12 conversations?

13 A Right, coming in -- in and out from the -- from his office
14 to -- to the front -- to the front door where his secretary is
15 at. It's not far, it's right there, coming in and out.

16 Q You say it's right there. Could you describe the distance,
17 approximately?

18 A Like three -- maybe five feet away.

19 Q Okay. Well, you were between Paul Bergrin's office and
20 another location five feet away from Paul Bergrin's office?

21 A Right.

22 Q And you were going back-and-forth at this time?

23 A Right.

24 Q And that's where you were when you overheard both of these
25 conversations?

1 A Right.

2 Q Now, after you heard these conversations, what were you
3 thinking?

4 A I was, like, you know, like this shit is really going down.
5 I mean -- excuse my language -- it's really going down, like,
6 you know, they putting this together now without me being in
7 the middle.

8 Q So what did you believe was going to happen at this
9 meeting, at the restaurant later?

10 A He was going to meet -- Changa was going -- I definitely
11 knew Changa was going to meet with Curry, you know, and that it
12 was being put together.

13 Q Okay. What was being put together?

14 A The deal that I had already established with Changa and
15 Curry.

16 Q Were you invited to the meeting?

17 A No.

18 Q So what did you conclude from that?

19 A I conclude that they already pushed me to the side.

20 Q You say "pushed you to the side." What do you mean by
21 that?

22 A Back-doored me.

23 Q What does "back-door" mean? What did you expect was going
24 to happen with your role in this transaction that you were
25 trying to negotiate?

1 A I expected it was going to go down -- I mean, they was
2 going to put it together themselves.

3 Q Did you expect that you were going to receive any money out
4 of this deal at this point?

5 A No.

6 Q Previously you expected that you were going to receive
7 money out of it?

8 A Correct.

9 Q And now you believed you were not going to receive money
10 out of this?

11 A Correct.

12 Q Describe how you felt about that.

13 A I felt -- I felt upset. I felt really upset, mad, angry.
14 Inside it was killing me. It was like -- it was just killing
15 me. It was like -- my focus was on Changa, I really wanted to
16 strangle him basically.

17 Q All right. So now you learned that this meeting is going
18 to take place and you're upset about it.

19 A Correct.

20 Q What do you do?

21 A I try to hurry up, finish what I have to do in the office
22 so I can go hurry up and catch Changa and everybody else, and I
23 just want to see the impression on they face.

24 Q In the act of doing what?

25 A Putting the meeting together, sitting down, talking about

1 whatever it is.

2 Q Now, at that point was Paul Bergrin still in the office?

3 A No.

4 Q Paul Bergrin's office.

5 Okay. Let me back up and rephrase the question.

6 When the conversations that you overheard regarding
7 this meeting are taking place later that night, was Paul
8 Bergrin in the office when those conversations took place?

9 A Correct, yes.

10 Q Okay. You were also in the office when those -- when those
11 conversations took place?

12 A Correct.

13 Q After the conversations took place, what did you see Paul
14 Bergrin do, if anything, that night?

15 A Put the phone down. He did -- he did what he had to do.
16 Whatever he had to do on the desk he did. I don't -- I knew I
17 left the office and went to do what I had to do so I, you know,
18 be able to get to the office -- I mean, to the restaurant as
19 well.

20 Q Do you know whether Paul Bergrin left the office at some
21 point after those conversations?

22 A Yes.

23 Q And were you still in the office when he left?

24 A Correct.

25 Q What did you do then?

1 A I finished -- I was trying to finish up as much as I can of
2 what I had to do so I could leave and hurry up to the
3 restaurant as well.

4 Q So did you finish doing your work?

5 A Yes.

6 Q And did you go to the restaurant?

7 A Yes.

8 Q Describe -- how did you get to the restaurant, first of
9 all?

10 A In a car.

11 Q In a car?

12 A Right.

13 Q Can you describe the speed with which you drove to the
14 restaurant?

15 A It was pretty fast.

16 MR. GAY: I'm going to show the witness Government
17 Exhibit 3000a and 3001.

18 THE COURT: Mr. Gay, indicate when you think it's a
19 good time to break for lunch.

20 MR. GAY: Okay. This is actually not -- this is going
21 to be a little bit on this meeting so it may not be a bad time
22 to do it now.

23 THE COURT: All right. Ladies and gentlemen, we'll
24 break for lunch. We'll see you back here at 1:35. Please
25 enjoy your lunch. Don't discuss anything about the case and

1 we'll see you in an hour.

2 THE DEPUTY CLERK: Please rise for the Jury.

3 (The Jury leaves the courtroom.)

4 THE COURT: Please be seated.

5 Marshals, please be sure to have the witness in here
6 in his seat by 1:35, please. We're going to start promptly at
7 1:35. So there's no mistake, make sure you get the
8 arrangements to have him here at 1:35. Okay?

9 All right. Thanks. We're in recess. Thanks.

10 (Witness temporarily excused and escorted out of the
11 courtroom by the Marshals.)

12

13 A F T E R N O O N S E S S I O N

14

15 (Proceedings resume - Jury not present.)

16 (The Witness is escorted into the courtroom by the
17 Marshals.)

18

19 R A M O N J I M E N E Z, called as a witness, having been

20

21 THE DEPUTY CLERK: Please remain seated.

22 THE COURT: Are we all set?

23 MR. GAY: Judge, I think there's a potential issue we
24 need to discuss. I have discussed it with Mr. Lustberg who has
25 discussed it or is discussing it with Mr. Bergrin.

1 THE COURT: Use the microphone, please.

2 MR. GAY: I apologize, Judge.

3 THE COURT: That's okay.

4 MR. GAY: Yes. There is a potential issue that we
5 have discussed. I've discussed it with Mr. Lustberg who is
6 either in the process of or has discussed it with Mr. Bergrin,
7 so I don't know if you want to do a sidebar or if you want
8 to --

9 THE COURT: We'll do it at sidebar. We have the
10 witness here, so let's do it at sidebar.

11 (At the sidebar.)

12 MR. GAY: Judge, if I can make the record because I
13 want to make sure this is on the record.

14 Okay. Judge, we just received at the lunch break
15 something from Mr. Jimenez' lawyer, and it's an Attorney Ethics
16 Grievance form which I guess we'll turn over -- which we have
17 turned over to the Defense and it will be marked as a
18 Jencks/Giglio exhibit for the trial, and we just received it at
19 the lunch break as I said. We made copies, we've turned that
20 over. I believe the Court has a copy of it as well at this
21 point. I won't bother to go over the substance since it's
22 going to be part of the record.

23 But I think the important thing that I do want to go
24 over with the Court is that I had a discussion with Mr. Jimenez
25 about the letter and about the reason why he filed the letter.

1 And so I want to make it clear to Mr. Bergrin and Mr. Lustberg
2 what is going to come out of Mr. Jimenez' mouth if they
3 cross-examine about this document in a particular way. There
4 may be a way to do it without this coming out; I don't know.
5 But I just want to make sure that everybody is clear on what is
6 going to come out of Mr. Jimenez' mouth.

7 Mr. Jimenez is going to testify, or would testify that
8 of his major concerns in cooperating in this case, given the
9 danger not only from Mr. Bergrin -- and I know Mr. Bergrin
10 contests that -- but other members, including some of the drug
11 co-conspirators that he is going to implicate, are dangerous
12 people, and that he was very concerned about mostly -- somewhat
13 for his safety, but mostly for the safety of his family and his
14 wife and his two children.

15 Now, his first -- he has a son who is a, like his
16 biological son, his and his wife's son. He also has a daughter
17 who is not his biological daughter but is his daughter because,
18 you know, it's his wife's daughter.

19 The daughter has -- the daughter's immigration status
20 was not clear. You cannot get into the Witness Protection
21 Program unless you are a citizen or lawfully here. So there
22 was an issue about whether she could get into the program or
23 not.

24 There was some preliminary discussions about this in
25 which we told both his lawyer and him that we would figure out

1 whether she could get in or not, and part of the issue was her
2 status was unclear. So as we were obtaining more information
3 about the daughter's status and about whether she could get
4 into the WITSEC program.

5 He continued to speak to us, and at one point it
6 looked as if the daughter was not going to be able to get into
7 the program. So we informed Mr. Azzarello of this. He
8 informed Mr. Jimenez. Mr. Jimenez then felt betrayed by his
9 lawyer; that his lawyer had led him down this path and that he
10 now -- you know, the most important thing to him was his family
11 being protected and now he was not going to be protected
12 anymore, and he said, basically, screw it, I want a new lawyer.
13 And he wrote this to his lawyer, he wrote this to the Grievance
14 Committee.

15 Now, the letter itself does not say anything -- and
16 there's a reference to the family and things like that -- but
17 what he says in the letter itself, what he did was he would
18 make notes from his memory about what the various conversations
19 were. And the purpose of this letter was to establish that
20 basically he had been screwed by his lawyer and I guess by --
21 it was mostly by his lawyer in his mind -- but in order to say
22 it he had to say he was screwed by the Government, too.

23 After this was done we learned that his -- a little
24 more information about his daughter's immigration status and
25 the fact that she did qualify, that she was able to get into

1 the program.

2 THE COURT: When did you find that out?

3 MR. GAY: We found that out -- the exact date, Judge,
4 I would have to ask for, I would have to ask the agent. But I
5 know that it occurred after the meeting that he had with Mr.
6 Azzarello. Because, again, see part of the problem, Judge, was
7 that we were relying on his wife to get us documentation --

8 THE COURT: Okay. But wait. Mr. Gay, my
9 understanding is that was written the day before he entered a
10 plea here in this court.

11 MR. GAY: It was -- I don't believe so, Judge. 9/28.

12 THE COURT: And he pled --

13 MR. GAY: He pled on 10 --

14 THE COURT: Well, it was written a few days before.

15 MR. GAY: No, it was very soon beforehand.

16 THE COURT: Right.

17 MR. GAY: I will say this, Judge, that what happened
18 according to what he's saying -- and it does bear out -- is
19 that he learned that his daughter could get into the program,
20 and that was what -- that was why he changed his mind and
21 decided he was then going to cooperate.

22 Now, I'd have to go back and look at the plea, Judge,
23 but I thought the plea was dated early October.

24 THE COURT: Gail?

25 MR. GAY: I think it's the 4th or the 6th.

1 MR. BERGRIN: I can get that.

2 MR. GAY: I know that's not a significant period of
3 time. And probably in the normal course if we would have known
4 this letter was out there we would not have gone through when
5 he did.

6 THE DEPUTY CLERK: Judge, October 6th.

7 THE COURT: 2nd?

8 THE DEPUTY CLERK: 6th.

9 MR. GAY: All right. Now, we were aware from
10 discussing with his counsel that he had a meeting with his
11 counsel in which he said, forget about it, I'm not doing this
12 anymore, I'm going to -- you know -- but we were -- we didn't
13 find out until -- obviously we didn't find out until today
14 about this letter, and I think his lawyer just found out bit
15 recently, too. I don't know.

16 So, Judge, the reason I'm bringing this up mostly is
17 because I want to make sure that Mr. Bergrin, who we had
18 already discussed this earlier, that one of the Giglio things,
19 disclosures was that we had offered to make a WITSEC
20 application for Mr. Jimenez' family, and that we agreed that we
21 would not bring that out unless the Defense was going to cross
22 on it. And the Defense said they were not going to cross on
23 it. So we did not bring it out and we still don't intend to
24 bring it out. But I am just -- again, this is important
25 because the answer that's going to come out of his mouth if

1 this is gone into on cross-examination is likely going to be
2 some version of what I just told you and, you know, perhaps not
3 as articulate at this time, but it's going -- that's what's
4 going to come out of his mouth.

5 MR. LUSTBERG: Okay. Judge, obviously we just got --
6 Mr. Bergrin had literally 30 seconds before the Court came out.
7 We just need a little time to reflect on it. And we understand
8 the concern, but it may be that we just need a little more time
9 to think about how to handle this. This is a delicate issue.

10 THE COURT: Is he going to say his concern included
11 Paul Bergrin?

12 MR. GAY: Well, I mean --

13 THE COURT: He had a concern?

14 MR. GAY: He had a concern for his safety. I mean, I
15 think the concern -- look, I didn't ask him that specifically,
16 Judge. But I can tell you that based on my understanding, he
17 had some concern for Paul, but the vast majority of his concern
18 was for the drug gang that he was going to be implicating as
19 well. So I think that -- I don't know that -- I mean, I could
20 certainly tailor it so that if you wanted me to walk through
21 this or if you had -- I mean, we could do something to make it
22 come out that he was concerned about the drug-dealing group.

23 MR. BERGRIN: The problem is we have a 302, and the
24 302 says they ask him: Do you have any fears or concerns for
25 your safety and your family's safety, and in the 302 it says

1 "no."

2 MR. LUSTBERG: With regard to you.

3 MR. BERGRIN: With regard to me.

4 MR. GAY: Well, no.

5 MR. BERGRIN: I'm sorry, I don't mean to cut you off.

6 I really apologize, Mr. Gay.

7 MR. GAY: My fault.

8 MR. BERGRIN: It's almost like an intimidation factor,
9 Judge. If you ask him these questions or go into this line of
10 questioning, that absolutely affects his credibility because he
11 makes some very heavy allegations. And I just reviewed it for
12 like ten seconds. But he makes some very serious allegations
13 against Mr. Gay and the agents in the case also, Judge, in
14 reference to what they promised him. The agent told him that
15 she's a very good friend of John Gay and --

16 THE COURT: I read it.

17 MR. BERGRIN: So I don't have to go into the
18 substance.

19 THE COURT: No, I read it and it's -- it's his
20 statement to an Attorney Grievance Committee, and it does say a
21 lot of things in there about this whole process, about how he
22 got here that would be of certain interest, I'm sure, to the
23 Defense.

24 Do you know -- I'm asking you: Do you know if he's
25 going to say Paul Bergrin, and after he already told the 302 --

1 and the FBI Agent?

2 MR. GAY: I don't know that he'll be saying that,
3 Judge. But the only -- I just wanted to raise this because
4 I -- I mean he may or may not say that. I know that, you know,
5 his main concern is not Mr. Bergrin.

6 THE COURT: All right.

7 MR. GAY: But if you were to ask him the question:
8 "Do you have any fear of Mr. Bergrin," I think he's going to
9 say he has some at least.

10 THE COURT: At that time he was a brother-in-law or,
11 you know, close to Paul, he was working for Paul. Paul was
12 helping him?

13 MR. GAY: Absolutely.

14 THE COURT: Paul never made any -- Mr. Bergrin I don't
15 think ever -- there's no evidence he ever made any threats
16 against him?

17 MR. GAY: No.

18 THE COURT: Did he continue to work there for a while?

19 MR. GAY: Well, he -- at this point, Judge, when he
20 writes the letter and before that -- I forget the exact date --
21 but he gets locked up again, and Paul --

22 THE COURT: No, after this meeting at Isabella's.

23 MR. GAY: Sure, he worked for him for a number of
24 years.

25 THE COURT: Well --

1 MR. GAY: Judge, there's no --

2 THE COURT: -- you did what you had to do. You
3 represented what you think might come out.

4 MR. LUSTBERG: Yeah.

5 MR. GAY: Yes.

6 MR. LUSTBERG: Look, obviously we haven't talked about
7 it thoroughly. But obviously --

8 THE COURT: You have more direct. Right?

9 MR. LUSTBERG: This is certainly something we need to
10 cross on.

11 THE COURT: It's up to you. I'm not telling you what
12 to do, but if he's told an agent in the 302 that he wasn't
13 afraid of Paul, there were no threats by Paul, and if he now
14 wants to say, yes, he was threatened by Paul -- you know, I
15 mean that's up to him.

16 MR. GAY: Yeah. I'm not suggesting he's going to say
17 that, Judge, just to be clear. I just want to make sure that
18 he's clearly afraid.

19 MR. LUSTBERG: We appreciate the notice.

20 THE COURT: No, no, he was afraid, and that was one of
21 his motivation factors for cooperating, was to get into a
22 protection program.

23 MR. GAY: Well, yes. But more importantly, Judge, the
24 purpose of the letter is that the reason why he wrote this
25 letter is because he felt that the rug had been pulled out from

1 underneath him and he was not going to get the protection for
2 his family from --

3 THE COURT: You just know that from interviewing him a
4 few minutes ago?

5 MR. GAY: Yes, yes absolutely.

6 MR. LUSTBERG: Because he doesn't say that in there.

7 MR. GAY: And that's part of the reason I wanted to
8 raise this. Because I know when you're reading this over
9 that's not coming out. So I didn't want -- what I didn't want
10 to have happen was you guys see this as a fruitful line of
11 cross-examination and what comes out of his mind is something
12 you guys aren't expecting to hear.

13 MR. LUSTBERG: We appreciate the notice.

14 MR. GAY: Okay.

15 MR. LUSTBERG: And will be guided accordingly.

16 MR. BERGRIN: Judge, can I ask this of the Court and
17 also an indulgence, especially since we have a jury: Maybe we
18 could finish up the direct examination of Mr. Jimenez. I could
19 have overnight to work on the cross-examination.

20 THE COURT: We'll see, Mr. Bergrin, we'll see. Let's
21 finish up the direct and let's see. But be prepared to go
22 forward with some across if you have to.

23 MR. GAY: Okay. Thanks Judge.

24 One more thing Judge. In light of this letter, I had
25 intended to on my direct to very briefly say: Did you meet

1 with the FBI? Did you initially tell them lies? And did you
2 get a lawyer? And did you later come in and proffer after
3 that?

4 MR. LUSTBERG: No problem.

5 MR. GAY: I'm going to just request the ability to
6 lead him because I don't want -- I know we just had this
7 discussion, I hope you guys are okay with that -- but I really
8 would like to be able to lead him through this so nothing comes
9 out that you guys are not going to -- and I'm just going to
10 simply say: Did you have a discussion with the FBI?

11 Yes.

12 Did you tell them things that were not true in the
13 first meeting?

14 Yes.

15 Did you have a subsequent meeting with them?

16 Yes.

17 Did you tell them things that were not true?

18 Yes, I did.

19 Did you get a lawyer?

20 Yes, I did.

21 did you subsequently come in and have additional
22 meetings with, you know, your lawyer, with the Government?

23 Yes.

24 And did you, you know...

25 MR. LUSTBERG: I don't even think that's leading, but

1 that's fine.

2 THE COURT: That's okay.

3 MR. GAY: I want to make sure we're not -- okay.

4 (In open court.)

5 THE DEPUTY CLERK: Please rise for the Jury.

6 (Jury present.)

7 THE COURT: All right. Thank you very much for your
8 patience, ladies and gentlemen. Please be seated.

9 Mr. Gay, you can continue.

10 MR. GAY: May I continue, your Honor?

11 Thank you.

12 DIRECT EXAMINATION CONTINUES

13 BY MR. GAY:

14 Q Mr. Jimenez, before the lunch break you had discussed what
15 you had learned about a meeting that was to take place between
16 Paul Bergrin, Hakeem Curry and a person known to you as Changa
17 at Isabella's Restaurant. Is that correct?

18 A Correct.

19 Q And is Isabella's Restaurant -- where is that located?

20 A On Summer Avenue, between Summer -- Summer, Elliot and
21 Gafter.

22 Q I don't know if you can move the microphone closer or --

23 THE COURT: He can't but he can move his seat closer.

24 Q Please do so if you can.

25 Now, you mentioned that you learned of the meeting and

1 that you drove to the meeting?

2 A Correct.

3 Q I'm going to show you what's about that previously been
4 marked as Government Exhibits 3000a and 3001 and ask you if you
5 recognize what's depicted in those photographs. Please look at
6 both of them.

7 A It's the restaurant, Isabella's on Summer Avenue.

8 Q And does that fairly and accurately depict Isabella's
9 Restaurant, the front of the building as it was on the date of
10 the meeting?

11 A Correct.

12 MR. GAY: Your Honor, I'd ask that these be admitted
13 into evidence at this time.

14 MR. BERGRIN: There's no objection, Judge. Thank you
15 very much.

16 THE COURT: 3000a and 3,000?

17 MR. GAY: 3000a and 3001, Judge.

18 (Government Exhibits 3000a and 3001 are received in
19 evidence.)

20 THE COURT: Okay. They're both in evidence.

21 MR. GAY: In we could publish first 3000a, and then
22 also 3001.

23 (Exhibits are published to the Jury.)

24 MR. GAY: Could we go back to 3000a, please.

25 Thank you.

1 Q Now, Mr. Jimenez, is that photograph that's up there now a
2 picture of the front of Isabella's Restaurant?

3 A Correct.

4 Q And is that the spot that you drove to on the night that
5 you're talking about?

6 A Yes.

7 Q Can you briefly describe what happened when you arrived at
8 the location?

9 A As I'm driving up Elliot Street, which is the front of the
10 restaurant, Paul Bergrin's car is in front of the restaurant.
11 Changas car I think was behind. Anyway, I seen three people
12 inside of the restaurant through the window.

13 Q You say you could see them through the window, is this
14 window are you talking about on the photograph itself?

15 A Right at -- the front of the -- right -- that big window
16 (indicating).

17 Q The large picture frame window --

18 A Right.

19 Q -- on the front?

20 And the doorway to Isabella's, is that also a glass
21 doorway?

22 A Correct.

23 Q So you could see through that as well?

24 A Correct.

25 Q So where were you when you see this?

1 A I was outside. I was in the car still. Then I parked the
2 car. After I parked the car I start to observe Bergrin, Changa
3 and Hak in the restaurant.

4 Q And what did you see them do, if anything?

5 A Shaking hands.

6 Q Do you know where -- can you describe where inside the
7 restaurant they were when they were shaking hands?

8 A Towards the back.

9 Q I'm now going to show you Government Exhibits 3005, 3006
10 and 3007. If you could take a look at those and tell me if you
11 know, what do those photographs depict?

12 A This is the front of -- this is --

13 Q Don't show it. Just tell us describe what they are.

14 First let me hand you 305. Well, let me ask you this
15 first:

16 What, just generally, what do these three photographs
17 show?

18 A Inside the restaurant.

19 Q Okay. And that's the restaurant, Isabella's?

20 A Correct.

21 Q Okay. And if you could take a look at 30005, what is that
22 a picture of?

23 A That is the inside of the restaurant.

24 Q Okay. And can you see if somebody is standing, where would
25 the person be standing, at the front of the restaurant or the

1 back of the restaurant taking that picture?

2 A Back.

3 Q Okay. Standing at the back looking to the front of the
4 restaurant?

5 A Right.

6 Q Now that's 30005.

7 How about 3006; what is that a view of?

8 A That's behind the counter.

9 Q Okay. So was that somebody standing at the front of the
10 restaurant or the back of the restaurant taking that picture?

11 A The back of the restaurant.

12 Q And what about 3007, what is that a picture of?

13 A It's the back of the restaurant.

14 Q And where would somebody be standing when they took that
15 picture?

16 A The top of the steps.

17 Q Okay.

18 A Some steps.

19 Q And you see there's a doorway, a doorway in there. What
20 does that lead to in that picture?

21 A Restroom.

22 Q Okay. These fairly and accurately depict the inside of
23 Isabella's Restaurant as it was on the night of the meeting?

24 A Correct.

25 MR. GAY: Okay. Judge, I'd ask that these be admitted

1 into evidence at this time.

2 THE COURT: 30005, 6 and 7?

3 MR. GAY: Correct, your Honor.

4 MR. BERGRIN: There's no objection, your Honor. Thank
5 you.

6 THE COURT: All right, they're in evidence.

7 (Government Exhibits 3005, 3006 and 3007 are received
8 in evidence.)

9 MR. GAY: I'm going publish to the jury.

10 This is 30005.

11 (An exhibit is published to the Jury.)

12 Q And if you could tell the members of the jury what that
13 depicts.

14 A That is the inside of the restaurant towards the back.

15 Q Okay. So this would be a person standing toward the back
16 of the restaurant looking towards the front of the restaurant?

17 A Correct.

18 Q Okay. Now you see in that picture there are a couple of
19 windows at the very end of the picture, the very front part?

20 A Correct.

21 Q Are those the windows that are in the very front of the
22 restaurant?

23 A Yes.

24 Q Where, if you see in this picture, approximately were Mr.
25 Bergrin, Mr. Curry and Changa when you saw them shaking hands?

1 A Towards the -- towards right here.

2 Q Okay. Now, if you can, there are a number of -- do you see
3 the red booths, the seats or the booth?

4 A Right.

5 Q Do you see if you count from the front of the picture on
6 the left-hand side to the back, so going from the back of the
7 restaurant to the front, do you see the booths there?

8 A Right.

9 Q Okay. Where approximately -- which booth would they have
10 been standing next to, if you know?

11 A Between the third and the fourth.

12 Q Now, when you saw this, were you inside or outside of the
13 restaurant?

14 A Outside of the restaurant.

15 Q How close to the restaurant were you?

16 A Across the street, coming towards the restaurant.

17 Q And --

18 A -- on the street.

19 Q Is the inside of the restaurant lit at that time?

20 A Yes.

21 Q I'm now going to publish 3006 for the jury.

22 THE COURT: What are the red marks on the screen?

23 MR. GAY: That's just -- I'm sorry, Judge. When he
24 touches the screen, it --

25 THE COURT: Yeah, I know. Can we erase those, please?

1 THE DEPUTY CLERK: It's in the corner, gentlemen.

2 MR. GAY: What do I have to do?

3 THE DEPUTY CLERK: In the corner.

4 The other corner I guess.

5 THE COURT: Okay.

6 Q Now, Mr. Jimenez, looking at 3006, what is that a view of?

7 A That is the view of behind the counter.

8 Q And this is, again, you're standing at the back of the
9 restaurant looking towards the front of the restaurant?

10 A Correct.

11 Q But this is behind the counter as opposed to the hallway
12 where --

13 A Correct.

14 Q Okay. Now let's look at 3007. And what does that depict,
15 what view of the restaurant?

16 A That's the back of the restaurant.

17 Q Okay. So if somebody is standing all the way in the back
18 of the restaurant looking to the front of the restaurant, this
19 is what would occur to their left?

20 A Correct.

21 Q Now, you were outside the restaurant, you could see inside
22 the restaurant. And you've already described what you could
23 see.

24 A Correct.

25 Q What did you do after that?

1 A I walked in the restaurant, Hak was walking out towards --
2 coming towards me walking out.

3 He said, hey, Ramon.

4 I keep walking. He was says, hey, Ramon.

5 I pass him. I see Changa towards the back where the
6 soda machine is at.

7 I look at him, I don't say nothing to him. I grabbed
8 a soda, turned around. Paul is starting to walked towards the
9 outside entrance door, and Changa starts walking out.

10 Q Okay. Now, when you said you walked -- when you first
11 walked in you saw Hak walking out; who is Hak?

12 A Hakeem Curry.

13 Q Now, I'm going to go back and show you again 30005.

14 Do you see in there approximately where it was that
15 you walked when you went inside the restaurant?

16 A Where I walked?

17 Q Yes. Where you walked once you got inside the restaurant.

18 A I walked -- I came in through here, came through here,
19 through here, through here to the back.

20 Q Okay.

21 MR. GAY: Judge, indicating that --

22 Q Well, let me ask you this, Mr. Jimenez. Do you see
23 anything, a red carpet in there in the photo?

24 A Yes.

25 Q And is that basically where you walked when you went

1 inside, on that red carpet?

2 A Correct.

3 Q Okay. Now you understand -- what did you do when you got
4 in there?

5 A I walked all the way towards the back where the soda --
6 soda machine is at..

7 Q Okay. I'm going to put up 3007 once again.

8 And do you see the soda machine --

9 A Actually it's a -- it's a refrigerator, soda refrigerator.

10 Q A refrigerator?

11 A Right.

12 Q Well, you see the refrigerator that you got the soda out of
13 in this picture?

14 A Yes.

15 Q Can you describe where it is in the picture?

16 A It's right -- this (indicating).

17 Q Okay.

18 MR. GAY: Judge, indicating for the record there is
19 something that looks like a front wood panel and there's a
20 white statue on top of it.

21 Q And that's where the sodas were?

22 A Correct.

23 Q Going back to 30005, when you walked in, where was Mr.
24 Curry? Can see from this photo?

25 A Curry, when I walked in, he was walking out towards the

1 soda -- towards the entrance, this way (indicating).

2 Q Okay. Now, Mr. Jimenez, on this sign in this picture, do
3 you see a sign in the upper right-hand corner that says "exit"?

4 A Correct.

5 Q Is that the exit to get out of the restaurant --

6 A Yes.

7 Q -- right below that?

8 A Yes.

9 Q Okay. So where was Mr. Curry in relation to that exit sign
10 when you saw him, approximately?

11 A Somewhere underneath the -- walking towards underneath the
12 sign.

13 Q Okay. Where was Mr. Bergrin at the time?

14 A Bergrin was towards the middle.

15 Q Okay.

16 A Middle of the restaurants.

17 Q So now when you see the booths there on the left-hand side
18 in this photo, which booth would you say he was closest to,
19 approximately?

20 A Third.

21 Q Third or fourth? Third booth from the back or the front?
22 I'm sorry.

23 A From the front.

24 Q Counting -- okay.

25 And where was Changa?

1 A Changa was past -- a little bit past the fourth booth
2 towards the back.

3 Q I'm going to show you Exhibit 3007. Does that photo depict
4 the area that Changa -- does that depict the area Changa may
5 have been in at that point?

6 A Right here.

7 Q Can you show where? Okay.

8 So he's directly behind the booth that's in the
9 picture on the right hand side. Is that correct?

10 A Correct.

11 Q Okay.

12 Now, can you describe what kind of mood you were in
13 when you walked inside the restaurant?

14 A Bad mood, real bad mood.

15 Q When you say a "bad mood," what do you mean?

16 A I was upset, angry, I felt mad, betrayed.

17 Q Why did you feel betrayed?

18 A You know, I was loyal to them, you know?

19 Q Well, what did you think had happened during this meeting?
20 You didn't see the meeting itself, you saw them shaking hands.

21 A Right.

22 Q What did you believe happened?

23 A I believed that the deal was made.

24 Q Which deal was that?

25 A The 25 kilos, cocaine.

1 Q Who was the deal made between?

2 A Changa, Curry and Paul.

3 Q Do you remember whether there was anyone else inside the
4 restaurant at that time?

5 A There was somebody else, I just -- I wasn't focused on
6 that. My focus was on Changa.

7 Q Why was that?

8 A I was -- I was very upset.

9 Q Okay. Why were you upset at Changa in particular?

10 A It's 25,000 that I was losing out of my pocket. Or not my
11 pocket; it was going into my pocket. And at that time I really
12 needed the money, so I was really upset.

13 Q Okay. But why Changa in particular?

14 A Changa was the one that I really trusted, you know, after I
15 gave him the -- Hakeem Curry's name, and he's a long time
16 friend of the family.

17 Q Now, you said you were upset. Is that correct?

18 A Correct.

19 Q And you were upset because you felt you had been cut out of
20 a deal?

21 A Correct.

22 Q Did you ever say anything to Hakeem Curry about being cut
23 out of the deal?

24 A Absolutely not.

25 Q Why not?

1 Q Is that a picture of Alejandro?

2 A Correct.

3 Q How long after this meeting that you just described took
4 place did you meet Alejandro, approximately?

5 A I say about maybe a week, two weeks later.

6 Q How did you get introduced to Alejandro?

7 A Through Changa.

8 Q Do you recall where it was that you first met Alejandro?

9 A At the bar on the corner of Broadway and Verona.

10 Q that would be the same bar that you earlier met Changa at?

11 A Correct.

12 Q Okay. I'm going to show you 3258. Do you recognize that?

13 A Yes.

14 Q And is that the bar that you met Changa at -- I'm sorry --
15 Alejandro at?

16 A Yes.

17 Q All right. And you said again, Changa was the one that
18 introduced you to Alejandro at that bar?

19 A Correct.

20 Q Did you have any discussions with Alejandro after you met
21 him that day?

22 A Yes.

23 Q Would you describe what those discussions were?

24 A That he didn't know I speak Spanish -- I mean English, just
25 Spanish, and that he wanted to, you know, learn how to get

1 around.

2 Q And what did you say?

3 A I said, sure, I got no problem, you know, showing you
4 around, where to go, how to meet people.

5 Q Now, when you first met him, Alejandro, did he tell you
6 what he was doing for a living?

7 A No.

8 Q Did you have any meetings with him after that?

9 A Yes.

10 Q How long after that?

11 A I say about -- I believe it could have been the same week,
12 the same weekend. I mean, it's like -- probably the same week.

13 Q Okay. So some time the same week is your memory --

14 A Right.

15 Q -- you saw Alejandro again?

16 A Right.

17 Q Do you remember where you saw him this time?

18 A Players Club. We met at the Players Club.

19 Q What is the Players Club?

20 A The Players Club is some like -- it's a little club. It's
21 like entertainment.

22 Q Is it a place you can get drinks?

23 A Correct.

24 Q So how did you meet him then?

25 A I told him how to get there, that I'll be there like in

1 five minutes. And he wasn't that far, he was living on Summer.

2 Q And when you got there, what did you guys do?

3 A We stepped inside the place, the club, and we bought
4 drinks. We was drinking for a few hours. We started talking.

5 Q Did he have drinks?

6 A Yes.

7 Q Did you have drinks?

8 A Yes.

9 Q Okay. What did you talk about?

10 A Started talking about -- he started talking about what he
11 could do.

12 Q Meaning what? What could he do? What did he say he could
13 do?

14 A That he could supply me.

15 Q Supply you with what?

16 A With some coke, as much as I want when I want.

17 Q All right. Now, you said that Changa had introduced you to
18 Alejandro. What was the relationship between Changa and
19 Alejandro?

20 A Friendship I believe it was at that time.

21 Q Was there any type of a business relationship between the
22 two of them that you either knew about then or became aware of?

23 A Well, I became aware there was more than that on that night
24 when he said this to me.

25 Q All right. So explain further what the conversation was.

1 He's telling you he can supply you with cocaine?

2 A Correct.

3 Q What is your response?

4 A My response was like, great, I mean I could use that.

5 Q Okay. And what did he say after that?

6 A He said that whenever -- whenever I wanted that, you know,
7 just call him and he'll have it for me.

8 Q "Have it," meaning what?

9 A Meaning that he'll have whatever I ask. If I asked him for
10 a kilo, two keys, three keys, he'll have that for me.

11 Q Did he say anything else to you during that conversation?

12 A No, not that I remember.

13 Q Was there any discussion about any deals that he had
14 recently done?

15 A Yes.

16 Q And please discuss that.

17 A He had said that -- the second time, he had said that -- we
18 met the second time, this is another time --

19 Q So there was another conversation you had. I apologize for
20 not being clear on this. You had another conversation with him
21 at another -- on another occasion?

22 A Correct.

23 Q When did that occur in relation to the first two?

24 A That occurred the following week.

25 Q Okay. So during that conversation, where does that

1 consideration take place.

2 A The same place.

3 Q The Players Club?

4 A The Players Club.

5 Q Are you having drinks?

6 A Correct.

7 Q Is he having drinks?

8 A Correct.

9 Q Describe the conversation, please.

10 A This day he was really happy and, you know, I, like -- he
11 was -- he was happy, he was glad. So he said that I just
12 got -- he just got finished doing a 25 deal -- 25 keys on the
13 deal.

14 Q Did he describe anything else about who he had done the
15 deal with?

16 A At that time it was Changa.

17 I said, was Changa involved?

18 He said, yeah.

19 I said, who did you sell the 25 keys to?

20 He said, I don't know. It was a black guy.

21 I said, do you know his name?

22 He said no.

23 I provided the name.

24 Q What name did you provide?

25 A Curry, Hakeem. I said Hak. Hak.

1 Q What did he say?

2 A He said I might -- he thinks that was it. He wasn't too
3 sure but he thinks that was it.

4 Q Did he discuss anything about any other deals he was doing
5 or getting ready to do?

6 A Yes.

7 Q What did he say?

8 A He said that the next deal is supposed to be like 50 keys.

9 Q Now, when you heard that, what did you think?

10 A I said, wow, you know, I was -- I felt kind of upset but
11 I -- I let it go.

12 Q Why were up upset?

13 A Because that was the deal that I was planning to get from
14 Curry.

15 Q So what did you learn about the relationship between Changa
16 and Alejandro?

17 A I learned that they was working together.

18 Q Working together to do what?

19 A To sell kilos.

20 Q Of what?

21 A Cocaine.

22 Q Now, at that point you had learned or you believed at least
23 that Alejandro was now part of the deal that you had been cut
24 out of -- Correct?

25 A Correct.

1 Q -- did you ever say anything to Alejandro about being cut
2 out of the deal?

3 A Absolutely not.

4 Q Why not?

5 A Again, I didn't want no bad blood between him, me, Changa
6 or anybody else. Just leave it as that. Take it as it comes.

7 Q What would have been the problem with bad blood between
8 Alejandro and you at that point?

9 A Well, I'm pretty --

10 Q What did you feel?

11 A I feel if I say anything to Alejandro they was going to say
12 something to me. They would put something else in his head,
13 tell them something about me to either hate me, push me to the
14 side or just ignore me.

15 Q When you say "push you to the side or ignore you," what do
16 you mean by that?

17 A Just not deal with me at all.

18 Q Deal with you in what capacity?

19 A In the cocaine, kilo, 2 kilos.

20 Q So you believed if you had made an issue of this, what was
21 going to happen with respect to Alejandro?

22 A If I was to initiate it?

23 Q Yes. If you were to say something to him, complain that
24 you had been cut out of a deal, what was your concern that he
25 was going to do? What was going to be the result?

1 A The result was -- nothing would have happened between me
2 and him. It would have ended right there. The relationship
3 would have ended. If I -- and then if I would have needed
4 something, like a key, two keys, there's nowhere to get it.

5 Q Let me ask you this: You were -- Alejandro in the previous
6 conversation asked you -- told you he could supply you with
7 kilograms of cocaine?

8 A Right.

9 Q Did you expect to make money off of him supplying you with
10 kilograms of cocaine?

11 A Correct.

12 Q So if you had bad blood with him, he was not going to
13 supply you with kilograms of cocaine?

14 A Correct.

15 Q And therefore you would not make any money. Is that
16 correct?

17 A Correct.

18 Q So what did you decide to do instead of making a fuss over
19 being cut out of the deal?

20 A I let it be.

21 Q Now, did you eventually come into -- get charged with your
22 activity relating to this, the drug activity you just talked
23 about?

24 A Yes.

25 Q And did you eventually plead guilty to your involvement in

1 this activity?

2 A Correct.

3 Q I'm going to show you Government Exhibit 7001. Do you
4 recognize that?

5 A Yes.

6 Q What is that?

7 A The Plea Agreement.

8 Q And is that the Plea Agreement that you signed in this
9 case?

10 A Correct.

11 Q The case that you pled guilty to?

12 A Correct.

13 Q Do you know what charge it was you pled guilty to?

14 A Possession of CDS, possession to distribute, something like
15 that.

16 Q Okay. If you could look on this there, highlight it and
17 please take a look at and read it and see what it was, what
18 charge is on the agreement.

19 A Trafficking, conspiracy.

20 Q Any particular drug?

21 A Cocaine.

22 Q Okay. Now, when you signed this agreement you had a
23 lawyer?

24 A Yes.

25 Q Prior to signing this agreement did you speak to any agents

1 from the FBI?

2 A Yes.

3 Q Was that prior to you actually being charged with any crime
4 in this case?

5 A Correct.

6 Q And when you first spoke to the FBI agents, did you tell
7 them the truth the first time you spoke to them?

8 A Nope.

9 Q How many times do you remember speaking to them before you
10 got a lawyer, if you remember?

11 A About two or three times.

12 Q Two or three times.

13 And when you spoke to them those two or three times,
14 did you tell them the truth?

15 A No.

16 Q Did you later get a lawyer?

17 A Correct.

18 Q Did your lawyer and you meet with the Government?

19 A Correct.

20 Q And did you eventually come in and speak to the Government?

21 A Correct.

22 Q After that, did you agree to plead guilty to the charges
23 that you just discussed in Government Exhibit 7001?

24 A Correct.

25 Q And did you also agree at that same time to cooperate with

1 the Government?

2 A Correct.

3 Q I'm going to show you Exhibit 7000 and ask you if you
4 recognize that.

5 A Cooperation agreement.

6 Q Is that the Cooperation Agreement you signed in connection
7 with this case?

8 A Correct.

9 Q Did you have a lawyer with you when you signed this
10 agreement?

11 A Correct.

12 Q What is your understanding of what you are supposed to do
13 pursuant to this Cooperation Agreement?

14 A Tell the truth.

15 Q And what do you expect to get in exchange for telling the
16 truth?

17 A Lesser time.

18 Q Lesser time on what?

19 A On my sentence.

20 Q The sentence on the charge that you pled guilty to?

21 A Correct.

22 Q That relates to the activity you just talked about?

23 A Correct.

24 Q As part of that Cooperation Agreement and Plea Agreement,
25 did the Government also say that they would notify Pennsylvania

1 authorities --

2 MR. BERGRIN: Objection, your Honor. The witness has
3 answered the question and all he expected was lesser time. I
4 don't believe that's proper questioning.

5 MR. GAY: If we could --

6 MR. BERGRIN: I would ask him to ask a nonleading
7 question.

8 MR. GAY: Could we have a brief sidebar on this? I
9 think Mr. Bergrin is not going to be objecting to the question
10 I'm going ask.

11 THE COURT: Yeah, go ahead. I think I know. Go
12 ahead.

13 (At the sidebar.)

14 THE COURT: Does this have to do with the Pennsylvania
15 parole violation?

16 MR. GAY: Yes. We told him that we would notify the
17 authorities of his agreement. If he doesn't want me to bring
18 out --

19 MR. BERGRIN: I thought you were going somewhere else.

20 THE COURT: I thought so. Okay.

21 MR. GAY: Fine.

22 (In open court.)

23 THE COURT: Objection is overruled.

24 BY MR. GAY:

25 Q Mr. Jimenez, let me ask you one brief question before that.

1 Did you at the time you signed this agreement have an
2 outstanding parole violation in the state of Pennsylvania?

3 A Correct.

4 Q And was that for the 1992 charge that you had previously
5 talked about?

6 A Correct.

7 Q And since you had gotten 20 year sentence, you were still
8 on parole on that charge. Is that correct?

9 A Correct.

10 Q You had gotten arrested for another drug violation at least
11 since you were on parole. Is that correct?

12 A That's correct.

13 Q So because of that you had an outstanding parole violation?

14 A Correct.

15 Q Did, as part of the agreement, did the Government also
16 agree that they would notify the Pennsylvania authorities about
17 your cooperation?

18 A Correct.

19 Q Now, as far as you understand the agreement, Mr. Jimenez,
20 who is it that ultimately determines your sentence?

21 A The judge.

22 Q Based on your understanding of the agreement, Mr. Jimenez,
23 what happens if you tell a lie during my questioning of you?

24 A There won't be no agreement.

25 Q And based on your understanding of the agreement, what

1 happens if you tell a lie when Mr. Bergrin is questioning you?

2 A No agreement.

3 Q Now, Mr. Jimenez, you testified that you had -- you worked
4 in Mr. Bergrin's office for a period of time. Is that correct?

5 A That's correct.

6 Q And do you recall what years -- you said you started some
7 time in 2002. When did you stop working for Mr. Bergrin, if
8 ever, if you recall?

9 A Some time in 2005.

10 Q And was that because you went to jail on another charge?

11 A No.

12 Q No? Okay.

13 During the time you were working with Mr. Bergrin,
14 while you were working in the office, did you attend any
15 meetings between Mr. Bergrin and Mr. Curry other than the ones
16 you've already discussed in this case?

17 A Yes.

18 Q And was there any particular meeting where they discussed a
19 cousin's case?

20 A Yes.

21 Q Can you briefly describe that meeting?

22 A This day I was -- I was upstairs, Hakeem Curry comes
23 upstairs, I was with Paul in the office. Hakeem Curry comes
24 in, sits down. I was doing some -- I was doing something for
25 Paul, and I got on the phone with my wife.

1 Because I'm, you know -- so I finished the
2 conversation with my wife. I hear Paul telling Hakeem Curry:
3 If there had been no witness, there would have been no case.

4 Q Now, let me back up.

5 Do you know what topic they were discussing at the
6 time?

7 A Yes.

8 Q Okay. Now, prior to the meeting or during the meeting --
9 well, let me rephrase the question.

10 How do you know what they were discussing?

11 A Hakeem sat down and said what was going on with his
12 cousin's case.

13 Q And after that happened, what if anything happened next?

14 A After that happened, that's -- I mean, it went into a
15 little more -- more, you know, conversation. But I was on the
16 phone. As I'm getting off the phone with my wife -- the only
17 thing I heard was -- the last thing I heard was that.

18 Q All right. Now, do you recall whether or not you got sent
19 for any files, to pick up any files during that meeting or
20 prior to that meeting?

21 A During that meeting.

22 Q Okay. Would you explain that?

23 A I was down -- Paul sent me downstairs to get four files.
24 Hakeem Curry and I believe Baskerville was one of the files.

25 Q Okay. And how sure are you that one of the files was

1 Baskerville?

2 A I'm 85 --

3 Q Sorry?

4 A -- 85 percent sure.

5 Q I'm sorry. I didn't hear what you said.

6 A I'm probably about 85 percent sure it was that file.

7 Q All right. Now, was Baskerville someone that you knew?

8 A Not personally.

9 Q So I'm just trying to get the timing of this down.

10 You said Hakeem Curry goes into Paul Bergrin's office.

11 Is that correct?

12 A Correct.

13 Q And they're having a conversation?

14 A Correct.

15 Q When is it in relation to that conversation that you go get
16 the files?

17 A Right after -- right after I got -- right after I got off
18 the phone and I heard that, I went to get the files.

19 Q Okay. So that you get the files after the conversation
20 takes place or before the conversation?

21 A After the conversation takes place.

22 Q Who else is in the office at this time?

23 A It was --

24 Q When I say "the office" -- well, let me back up and make
25 sure I make this clear.

1 Where does this conversation take place?

2 A Inside Paul Bergrin's office.

3 Q Who else is in the office?

4 A Me, that's it.

5 Q Just you and Paul Bergrin?

6 A Right.

7 Q Was Hakeem Curry also in there?

8 A Yes, Hakeem Curry was there.

9 Q So where is Paul Bergrin at the time he's making -- having
10 this conversation with Hakeem Curry?

11 A Sitting behind his desk.

12 Q And where is Hakeem Curry?

13 A Sitting right in front of him.

14 Q And where are you?

15 A I'm right next to them, right -- I was towards the window.

16 Q What distance away from --

17 A Probably a foot.

18 Q When you heard Paul Bergrin say this, again what did you
19 say?

20 A There would have -- if there had been no witness, there
21 would be no case.

22 Q And when he says that, what happens next?

23 A I got off the phone and I stood there and I was looking at
24 Hakeem Curry to see what he was going to say. And he looks at
25 me crazy.

1 Q Okay. When you say you looks at you crazy, describe what
2 you mean by that.

3 A Like that serious look. Like, what am I -- you know, what
4 am I doing? Like, if I'm staring at him, like.

5 Q Okay.

6 A Like, what are you looking at? I don't know.

7 Q All right. And what happened next?

8 A Then Paul says: Don't worry, he's all right.

9 Q Who does he say that to?

10 A He says that to Hakeem Curry.

11 Q And who was he saying that about?

12 A About me.

13 Q All right. Now, I just want to make sure I'm clear on one
14 thing. When Paul Bergrin said the phrase that you just talked
15 about regarding the witness in the case, are you on the phone
16 or you're off the phone at that point?

17 A I'm off the phone.

18 Q Okay. So you just -- you were on the phone with your wife?

19 A Right -

20 Q -- during part of the conversation?

21 A Right.

22 Q You hang up the phone with your wife?

23 A Right.

24 Q And that's when you hear Paul Bergrin utter that phrase?

25 A Correct.

1 Q And what is it that he says?

2 A He says something to the effect that, if there would have
3 been no witness, there would be no case.

4 Q And it was some time after that that he sent you to get
5 files?

6 A Right.

7 Q And what files did he send to you get?

8 THE COURT: I think you've asked this, Mr. Gay.

9 MR. GAY: Okay, all right. I was just trying to
10 clarify the chronology of it, Judge.

11 THE COURT: He said after he heard that he went and
12 got certain files. Go ahead.

13 MR. GAY: Okay.

14 Q What did you do after you got the files?

15 A I came upstairs with them, and I left.

16 Q You dropped them off?

17 A Correct.

18 Q Who was in the office at that time?

19 A Hakeem Curry and Paul Bergrin.

20 Q Now, this conversation that you just talked about, do you
21 remember when that occurred in relation to you trying to broker
22 the deal between Hakeem Curry and Changa? Was it before or
23 after?

24 A It was after.

25 Q Were you also present working in Paul Bergrin's office when

1 Hakeem Curry brought something into Paul Bergrin's office?

2 A Yes.

3 Q Would you describe what happened with that?

4 A It's a tracking device. I can't -- at this day I was in
5 the office after hours with Paul. We hear something. The door
6 opens downstairs, because it's got a little beep, beep, beep
7 beep, beep when you open the door. But then there's another
8 door that you have to go through that we keep locked and you
9 can't get into the offices. So...

10 Q What did you do?

11 A So I go downstairs to see who it is. It's Hakeem Curry and
12 somebody else.

13 Q Did you recognize the other person?

14 A No.

15 Q Can you describe the other person?

16 A Kind of tall, heavy guy.

17 Q Okay. And do you remember anything about hair style, skin
18 tone, anything? Race?

19 A He was -- he was -- he was African.

20 Q Okay. And you said he was tall. How tall would you say he
21 was, approximately?

22 A He was about six -- 6-foot two, something like that.

23 Q What happened. You let them in, and what happened?

24 A I let them in, I followed them straight upstairs. They was
25 carrying something in -- in their hands.

1 Q Who was carrying something?

2 A The heavy set guy.

3 Q Who was with Curry?

4 A Correct.

5 Q Did you see what it was they were carrying?

6 A At first it looked like a bomb device.

7 Q Okay. Can you describe what the device looked like to you?

8 A It was -- it was like box. It was (demonstrating) --

9 Q If you can, you have to hold your hands a little higher so
10 everybody can see it.

11 A It was like this (demonstrating).

12 MR. GAY: Indicating for the record, Judge,
13 approximately 12 to 14 inches.

14 THE COURT: Yeah. In width.

15 MR. GAY: In width?

16 A Right.

17 Q How about in -- how about --

18 A And maybe about like that (demonstrating).

19 MR. GAY: That's about, say, eight to 10 inches?

20 THE COURT: That's correct.

21 Q And how about in height, about how high was it?

22 A Probably like that thick.

23 MR. GAY: Okay. Indicating two and a half to three
24 inches for the record.

25 Q Do you remember what color it was?

1 A It was black.

2 Q Could you see what it was made of?

3 A It had -- there was batteries, big batteries in it.

4 Q What happened after they walked in with this -- with this
5 device, where did they go?

6 A Straight into Paul's office, Paul Bergrin's office.

7 Q Did you follow?

8 A Yes.

9 Q What happened when you got in the office?

10 A As soon as we got in, Curry stated that they seen somebody
11 putting something -- a white person putting something up
12 underneath his car. Paul looked at it one time and he says,
13 that's the feds. Put that shit back up in your car, put it
14 back where you got it from or get it out of my office.

15 Q And what did you understand that device to be that they
16 brought into the office?

17 A It was a tracking device.

18 Q Have you ever seen anything like that before?

19 A Not really.

20 Q What did you see anybody do with that tracking device at
21 that point?

22 A He walked out with it, the heavy set guy, the one that was
23 with Hakeem Curry.

24 Q What happened to Curry at that point?

25 A Hakeem, he -- he stood in the office with Paul.

1 Q What did you do after that?

2 A I continued doing what I was doing throughout the office.

3 Q Okay. Now, this tracking device that you just talked
4 about, when did that incident occur in relation to the drug
5 deal you tried to broker and the conversation you had about
6 the -- if there would be no witness, there would be no case?

7 A Right after.

8 Q Did you learn that Mr. Curry was arrested?

9 A Correct.

10 Q And when, in relation to those other events that you talked
11 about, did you learn of Curry's arrest, before or after?

12 A After.

13 Q After the tracking device?

14 A Correct.

15 Q How did you learn that Mr. Curry was arrested?

16 A He came in the office, and the girls, the receptionist, the
17 secretary, they was all talking about it.

18 Q Did you later speak to Changa about Hakeem Curry's arrest?

19 A Correct.

20 Q And where was it that you spoke to Changa about Hakeem
21 Curry's arrest?

22 A In his garage.

23 Q What if anything did Changa tell you about that?

24 A He was concerned about Hakeem Curry.

25 Q Did you tell him Cury was arrested, or he --

1 A He heard it.

2 Q He already knew?

3 A Yeah.

4 Q So what does he say?

5 A He said, what do I think about Hakeem Curry.

6 And is he going to start telling on people now or
7 what's -- I mean, do you think that they're going to start --
8 or do you think they're going to start rounding people, you
9 know -- arresting people.

10 I said, I don't know.

11 Q So he said he's concerned about Curry, and that Curry was
12 going to do what?

13 A Is he going to start talking.

14 Q Talking about what?

15 A About the deals, you know, just --

16 Q What deals?

17 A The deals that they had.

18 Q What kind of deals?

19 A Cocaine.

20 Q So she's concerned about Curry talking to who about those
21 deals?

22 A To the feds.

23 Q The "feds," being?

24 A FBI.

25 Q What did you say when he expressed that concern?

1 A I told him, I don't know.

2 Q Did he say anything else to you about Mr. Curry's arrest?

3 A No.

4 MR. GAY: Judge, I have no further questions at this
5 time.

6 THE COURT: All right.

7 Mr. Bergrin, cross-examination, please.

8 MR. BERGRIN: Judge, could we have a five-minute
9 break, please, so I can use the men's room?

10 THE WITNESS: I have to use it, too.

11 THE COURT: All right.

12 Ladies and gentlemen, we'll take just a short break
13 and then we're going to continue a little later today. Thank
14 you. If you could please step into the jury room.

15 Everyone, please be back in ten minutes promptly,
16 please. Okay?

17 (The Jury leaves the courtroom.)

18 THE COURT: He has to use room. Okay?

19 Mr. Bergrin, if you're going to use the men's room,
20 let's have him taken -- no, no, I thought he was -- okay, thank
21 you, Marshal.

22 (Witness temporarily excused and escorted out of the
23 courtroom by the Marshals.)

24 (A recess is taken.)

25 (Proceedings resume - Jury not present.)

1 R A M O N J I M E N E Z, resumes, testifies further as
2 follows:

3
4 THE COURT: All right. Let's resume.

5 MR. BERGRIN: Thank you very much, Judge.

6 THE COURT: All right, everyone, please be seated.
7 Go ahead, Mr. Bergrin.

8 MR. BERGRIN: Thank you.

9 THE DEPUTY CLERK: Please rise for the Jury.
10 (Jury present.)

11 CROSS-EXAMINATION

12 BY MR. BERGRIN:

13 Q Mr. Jimenez, when you came to my office to work, you were
14 coming off a 10-year sentence that you had just did. Correct?

15 A Correct.

16 Q And your sister, Yolanda, in front of you asked me,
17 essentially she pleaded with me to give you a job. Correct?

18 A Don't remember if she pleaded.

19 Q She asked me to hire you because you had no job. Correct?

20 A Correct.

21 Q And you had no prospects at employment?

22 A Correct.

23 Q You didn't even have a place to live or any food or any
24 clothing to wear. Correct?

25 A Correct.

1 Q And Yolanda said in front of you: Please give my brother a
2 job. He doesn't intend to ever go back to prison. Correct?

3 A Correct.

4 Q And you made me a vow and a promise that you would do
5 nothing wrong and not get in trouble. Correct?

6 A Correct.

7 Q You said you're never going back again as long as I live.
8 Isn't that what you said to me?

9 A Correct.

10 Q Give me a chance, give me the last chance I'm asking from
11 you in my life. Correct?

12 A Correct.

13 Q And you started at 8:30 in the morning, and I made sure you
14 were there at 8:30. Correct?

15 A Correct.

16 Q And you had to wear a shirt and a tie?

17 A Correct.

18 Q And you worked all day until 5 o'clock at night?

19 A Correct.

20 Q You did the mail room. Correct?

21 A Correct.

22 Q You did filing?

23 A Correct.

24 Q At the time that you came to work for me and for the first
25 probably year, isn't it a fact that you took either a bus or

1 somebody picked you up?

2 A Correct.

3 Q And you couldn't afford even to buy a car or even pay
4 transportation. Correct?

5 A Correct.

6 Q So when you told this jury after this meeting a couple of
7 months, or within six months into your work at my place that
8 you got into your car and you drove very fast to Isabella's,
9 isn't it a fact that you were not being accurate?

10 A I don't think so.

11 Q Now, you said that you worked at my office. Correct.

12 A Correct.

13 Q And isn't it a fact that Marisol Perez, who lived in
14 Belleville, was picking you up because you were living at
15 Yolanda's and your mother's house?

16 A Correct.

17 Q And she would have to take you to work every day and drop
18 you off on the way home. Correct?

19 A Correct.

20 Q And Marisol worked until 5 o'clock at night. Right?

21 A Right.

22 Q Now, you couldn't afford a car. Isn't that correct?

23 A At that time, that's a fact.

24 Q And at the time of the Changa meeting, isn't that a fact?

25 A No.

1 Q You said the Changa meeting occurred within the first six
2 months of you working at my office. Didn't you testify to that
3 a little while ago?

4 A Correct.

5 Q And isn't it a fact that you just testified that for a year
6 you had taken public transportation and couldn't afford a car.
7 Isn't that what you just said? The words that came out of your
8 mouth a few minutes ago before this jury.

9 A Repeat that over again.

10 Q You just testified that for about a year into working at my
11 office you could not afford a car. Isn't that a fact?

12 A I don't remember the whole year I could not afford a car.
13 I had to have a car.

14 Q Isn't it a fact -- excuse me, I'm sorry for interrupting.
15 Go ahead.

16 A I got car within the first six months through Changa.

17 Q Isn't it a fact that you just told the jury that for the
18 first year you didn't have a car, you had to take
19 transportation, somebody had to pick you up and drop you off?
20 Isn't that what you said? Isn't that the words that came out
21 of your mouth?

22 A That might have been the words that came out of my mouth
23 but I really didn't understand the question. I need to
24 understand the question that -- I understood at the beginning I
25 didn't have the car when I first started working in the office.

1 But for a fact, within the first six months I did have
2 the car. It was a Mitsubishi Mirage 2001.

3 Q And you had a driver's license also?

4 A No.

5 Q So you're telling us that you were driving around without a
6 license?

7 A Correct.

8 Q What about insurance?

9 A I had insurance.

10 Q You had insurance?

11 A Correct.

12 Q Whose name was the car registered to?

13 A To Hannah Carroll.

14 Q Now, when you started working at my office you had specific
15 job duties and you had specific times you had to report there.
16 Correct?

17 A Correct.

18 Q Now, you testified that you were looking through files for
19 names. Correct?

20 A Yes, that's what I do.

21 Q And you said that you noticed that there was a Hakeem Curry
22 file?

23 A Yes.

24 Q What was Hakeem Curry charged with?

25 A I believe it was drugs, something. I mean, I looked at all

1 files. I mean, it was so -- it was too long, it's a long time
2 ago and I ain't going -- I can't remember specifics. But I
3 know --

4 Q Isn't it a fact that Hakeem Curry had no charges and had no
5 file during the entire time that you worked in the office, sir?

6 A No, it was a Hakeem Curry file in that office.

7 Q What were the charges? Tell us about the charges. You're
8 so familiar with Hakeem Curry, tell us.

9 A I cannot remember the charges at the time, exactly the
10 charges. I couldn't tell you because it's been too long.

11 Q But you could remember messages and what recording said on
12 his telephone eight years ago, that's what you could remember.
13 Correct?

14 A Correct.

15 Q Now, you said that you were cut out of the deal. Correct?

16 A Absolutely.

17 Q And you said that you heard me asking for Changa's number,
18 and I did it in front of you as a matter of fact. Isn't that
19 right? Isn't that what you testified to?

20 A Yes.

21 Q And you also heard me saying to Changa or somebody to meet
22 them at Isabella's at a certain time. Right? You can't
23 remember the time. Correct?

24 A Correct.

25 Q This is in front of you where you had just been cut out of

1 a deal, I'm going say that in front of you where you had just
2 been cut out of a deal?

3 A What do you want me to say? That's what I heard.

4 Q You testified that I left the door open and that you went
5 in my office. Correct?

6 A Well, I'm in your office all the time. You know that.

7 Q You were in my office, coming in and out of my office.
8 Correct?

9 A That's correct.

10 Q And I'm planning a meeting at Isabella's cutting you out of
11 a deal with you coming in and out of my office in front of you?

12 A Correct.

13 Q When my office door is closed you can't come in. Correct?

14 A I can go in. I can go in when you in there when the door
15 is closed.

16 Q Oh yeah? And you listened to --

17 A I'm not --

18 THE COURT: All right, all right, all right. No "oh
19 yeah," and no back-and-forth.

20 Listen to the question. Answer the question.

21 And give him a chance to answer the question, Mr.
22 Bergrin.

23 A Every time I knock on your door and I come in. You know
24 that.

25 Q You come in even when I'm with a client, correct, having a

1 private conversation with a client?

2 A At times, sometimes if you said, come in, I come in. If
3 you with a client, I'm not just going to go in there. Like, I
4 knock. If you said it's okay. I come in. If you say, you
5 know, wait a minute, then I just wait.

6 Q And my door has a lock on it also. Correct?

7 A Correct.

8 Q And when my door is closed, isn't it a fact that you are
9 not allowed in there when my door is closed unless I give you
10 permission to come in there?

11 A Correct.

12 Q Now, you said that you wanted to strangle Changa. Correct?

13 A Absolutely.

14 Q And you were so mad at Changa that you didn't want anything
15 to do with him again. Correct?

16 A Correct.

17 Q You didn't have any words with me. Right?

18 A No, correct.

19 Q You said absolutely nothing me whatsoever. Right?

20 A Correct.

21 Q Now, you said there came a time when Changa came to my
22 office and you had never seen him there before. Correct?

23 A Correct.

24 Q By the way, what's Changa's name?

25 A Jose something. I -- I mean, I wasn't never interested in

1 his last name, first name. I just knew him as Changa. A long
2 time friend of the family. I got to really meet him when I was
3 maybe -- as a matter of fact, I got to really meet him when I
4 came home.

5 Q So you never met him before? A long time friend of the
6 family?

7 A I heard of Changa but I never got to really meet him. He
8 was doing fed time.

9 Q And when you met Changa, you never got to know his name,
10 ever?

11 A You ain't going to say ever. I just don't remember.

12 Q But you can remember conversations that you had and
13 specific places people were at a restaurant nine years ago?

14 A The reason for that is, because at the time --

15 Q You can answer the question "yes" or "no." I asked you a
16 question.

17 A Yes.

18 MR. GAY: Your Honor, he didn't -- he can answer
19 however he's going to answer. Mr. Bergrin asks a question.
20 This witness should be able to answer however the question
21 calls for.

22 THE COURT: Mr. Gay, you can have redirect. Okay?

23 MR. GAY: But --

24 Q Now, you said that Changa was there for a real estate
25 closing. That's what he told you. Correct?

1 A Correct.

2 Q And isn't it a fact that according to a statement that you
3 gave to the FBI, you looked for his file?

4 A Correct.

5 Q And what name did you look for the file under?

6 A Like I said, at the time I knew it, I just don't remember
7 it.

8 Q How many hours did you spend preparing for your testimony
9 with the U.S. Attorney?

10 A I never did.

11 Q You never met with the U.S. Attorney to prepare your
12 testimony?

13 A Of course I met with the U.S. Attorney, but I don't know --

14 Q I just asked you a simple question. You said you never
15 did. How long did you -- I guess you didn't understand that
16 question either. Correct?

17 THE COURT: Mr. Bergrin, just ask him a question.

18 MR. BERGRIN: I'm sorry. I'll ask the questions.

19 Q How long did you spend with the Assistant U.S. Attorney to
20 prepare for your testimony here?

21 A I don't know what you mean by "prepare," but about maybe a
22 half hour, 20 minutes.

23 Q Twenty minutes to a half hour? When was that?

24 A Twenty minutes. I'd say half hour.

25 I don't have no watch, I don't have no time -- I can't

1 tell you exactly how much time we spent together.

2 Q And when was that?

3 A That was a couple of days ago maybe.

4 Q It's your testimony under oath that you didn't speak to him
5 yesterday?

6 A Yesterday, did I speak to him?

7 Yes, I spoke to him yesterday.

8 Q So then why did you tell the jury "a couple of days ago"?

9 A Because I was here yesterday to testify. Before I was -- I
10 was here before that. I was --

11 Q How many times have you spoken to the Assistant U.S.
12 Attorney?

13 A About four times.

14 Q About four times?

15 A Yes.

16 Q And how long did you meet with him during the first
17 session?

18 A The first session, like two hours.

19 Q The second session?

20 A About the same.

21 Q The third time?

22 A I'm not sure about the third.

23 Q And do you remember the dates or how long ago was the first
24 meeting?

25 A I had -- I had them written down. I mean, I don't have

1 them now. I can't -- you know, I would tell you the first
2 meeting is -- wow. I wrote it down somewhere.

3 Q What about the last meeting?

4 A The last meeting was -- it was in between the 15th -- let
5 me see. I -- I didn't think it was that important to keep the
6 dates in mind.

7 Q How long ago? How many months ago?

8 A The last meeting?

9 Q Yes.

10 A It was not too long ago. This month.

11 Q This month?

12 A Yeah. I would say probably last -- a few days ago maybe.

13 Q You just said you met with him yesterday. So the last
14 meeting was now two days ago or yesterday?

15 A Yesterday I was here for court.

16 Q Did you speak to the U.S. Attorney yesterday while you were
17 waiting to go to court?

18 A Yes.

19 Q So then the last meeting that you had with the U.S.
20 Attorney was not two days ago, correct, it was yesterday?

21 A Correct.

22 Q Now, isn't it a fact that Changa was a relative of yours?

23 A No.

24 Q Then why did you tell the FBI that he was a relative of
25 yours?

1 A He's like a relative.

2 Q Isn't it a fact that you said that Changa is a distant
3 relative? Not "like a relative"; Changa is a distant relative?
4 Not "like a relative." Isn't that what you said, the words
5 that came out of your mouth?

6 A No -- I might have said that, I'm not denying it. It might
7 have been true, I just don't remember that.

8 Q Now, your testimony was that I didn't know Changa.
9 Correct?

10 A I don't remember saying that.

11 Q Didn't you testify that you don't know whether Paul Bergrin
12 ever met Changa? Wasn't that your testimony a couple of hours
13 ago, a short time ago?

14 A No.

15 Q You don't remember that? You don't remember those words
16 coming out of your mouth: "I do not know whether Paul Bergrin
17 ever met Changa before"?

18 A No. I actually said that you met -- you might have met
19 Changa through my sister, through relatives. You don't -- I
20 didn't know -- I didn't know if -- if you knew him prior to
21 when I knew him, when I was out there, but I knew that you knew
22 him through family members.

23 Q But then why did you tell the jury that Paul Bergrin may
24 not have ever met Changa before? Why did you say that and why
25 did those words come out of your mouth?

1 MR. GAY: Judge, objection. That's not what he said.

2 THE COURT: Well, ladies and gentlemen, it's your
3 recollection that counts as to what was said by the witness.
4 Okay?

5 So the objection will be sustained right now. But
6 it's your recollection as to what you remember the witness has
7 said before and what he might be saying now and whether they're
8 consistent/inconsistent. It's up to you to make those kinds of
9 determinations. Okay?

10 Q Prior to the meeting at Isabella's that you talked about,
11 isn't it a fact that you had never seen Changa in the office?

12 A What do you mean, "prior to the meeting?" Before the
13 meeting?

14 Q Before the meeting.

15 A Yes, I seen him in the office before the meeting.

16 Q You saw Changa in the office before the meeting?

17 A Correct.

18 Q Isn't it a fact that you testified that you had not seen
19 Changa in the office before the meeting?

20 MR. GAY: Objection. That's not what he testified to.

21 MR. BERGRIN: It absolutely is, Judge.

22 MR. GAY: Judge, objection.

23 THE COURT: Mr. Bergrin, nobody --

24 MR. GAY: He can't --

25 THE COURT: Okay. I'll allow the question, but

1 instead of saying, "isn't it a fact," Mr. Bergrin, just ask him
2 the question: Did he testify before to this effect.

3 Q Did you testify before that Changa, prior to the meeting at
4 Isabella's, that Changa had not been in the office?

5 A Absolutely not.

6 Q Now, you testified that I asked you for Changa's number.
7 Is that what you testified?

8 A Correct.

9 Q And did you give me the number?

10 A No.

11 Q Here you're being cut out a deal, according to you, and I'm
12 asking you for Changa's number to set up the meeting to cut you
13 out of the deal. Is that what you're testifying to?

14 A Correct.

15 Q Now, you testified in reference to doors being opened,
16 doors being closed when you had the conferences with Hakeem
17 Curry.

18 A That's correct.

19 Q Did anybody else walk into those rooms during the meetings
20 with you and Hakeem Curry to see him?

21 A Absolutely not.

22 Q So you could go into a closed door and nobody would walk
23 in, but you could walk into my office with the door closed?

24 A I mean, if you put the lock on it, nobody is coming in. If
25 you don't put the lock on it, it's a possibility somebody would

1 knock and go in.

2 Q So now you're telling us that you remember locking the
3 doors?

4 A No, that's not what I'm saying. I'm just answering the
5 question that was asked.

6 Q Now, prior to you having the meeting in the conference room
7 with Hakeem Curry, you had never spoken to Mr. Curry. Correct?

8 A I spoke to Mr. Curry twice, maybe -- yeah, twice.

9 Q Twice?

10 A Three times maybe.

11 Q And you can remember that you spoke to him twice or three
12 times eight years ago?

13 A Correct.

14 Q And prior to you speaking to Mr. Curry and proposing to Mr.
15 Curry about the cocaine deal, isn't it a fact -- well, tell us
16 about the conversation that you had with him before that,
17 before proposing the cocaine deal in the conference room. What
18 did you talk about?

19 A That was the first conversation.

20 Q That was the first conversation you ever had with Mr.
21 Curry, according to you?

22 A Well, besides the time you introduced us.

23 Q Now, I introduced you to Mr. Curry as Ramon, and then I
24 said, you just finished 10 years for a drug case. Is that what
25 I said?

1 A Right. You introduced me as your brother-in-law, Ramon,
2 and that I just got finished doing 10 years, something like
3 that.

4 Q So I'm going to tell Mr. Curry, according to you, about
5 your background and you having a 10 year sentence and just
6 finishing it. Is that what you said, the first I ever
7 introduced Mr. Curry to you?

8 A Absolutely.

9 Q So it's your testimony that I introduced you to Mr. Curry
10 and I said, by the way, he just finished a 10 year sentence?

11 A Absolutely.

12 Q Now, the first conversation that you have with Mr. Curry in
13 the conference room -- correct?

14 A Correct.

15 Q -- how many times had you seen Mr. Curry prior to that?

16 A Quite a few times. I'm not going to say a specific number
17 because I don't remember the number, so I know it was quite a
18 few times.

19 Q And you never had any conversations with him. Correct?

20 A During the time that I was seeing him in the office?

21 Q Yes.

22 A No, just hi and bye, how are you doing? That's it.

23 Q And you walk up to Mr. Curry, you ask him to follow you
24 into the conference room. Correct?

25 A Correct.

1 Q And never having a conversation with him before other than
2 hello and good-bye, you propose a multi-kilogram deal.

3 Correct? Is that your testimony?

4 A Correct.

5 Q Fifty, 25 kilograms. Correct?

6 A Well, he -- he's the one who said the number. I never said
7 a number. I just said "weight."

8 Q And he proposed to you, never having a conversation with
9 you before in your life, a 25 kilogram deal, and according to
10 your price, at \$21,000 a kilo?

11 A Correct.

12 Q Never meeting you before he proposed a \$500,000 deal with
13 Ramon Jimenez?

14 A That is correct.

15 Q And you never told me about that. Correct?

16 A That is correct.

17 Q And to the best of your knowledge, Hakeem Curry never told
18 me about that. Correct?

19 A Best my knowledge, I mean I never seen him telling you
20 that. No, you right.

21 Q So the answer is, no, he never told me about it. Correct?

22 A I'm not going to say he didn't tell you about it because I
23 don't know. I mean, I don't know if he did or I don't know if
24 he didn't. I mean -- I mean, if you approach -- I mean, you
25 told me -- you call me up in the office, you telling me that,

1 did I ever talk about a deal with any of your clients.

2 I said yes.

3 Q Now, Mr. Jimenez, what was your telephone number back then?

4 A I just remember 484, that's the first three numbers I
5 remember.

6 Q And do you remember what number you called Mr. Curry at?

7 A Absolutely not.

8 Q Do you remember what number you called Mr. Changa at?

9 A Absolutely not.

10 Q Were you ever shown any telephone records between you and
11 Mr. Curry, any calls between you and Mr. Curry?

12 A Absolutely not.

13 Q Were you ever shown any telephone records of you and Mr.
14 Changa?

15 A Absolutely not.

16 Q Did you ever turn over telephone records of yours back
17 then?

18 A Absolutely not.

19 Q Now, you proposed this deal with Mr. Curry. Correct?

20 A Correct.

21 Q And you proposed it at, your testimony was, 21,000?

22 A That is correct.

23 Q Now, you talked to the FBI about this. Correct?

24 A Correct.

25 Q And I'm sure you told them about that. Right?

1 A Right.

2 Q And do you remember what price you told the FBI that you
3 were proposing Mr. Curry?

4 A At 21.

5 Q And you're sure about that. Correct?

6 A Correct.

7 Q Because your memory is so perfect. Right?

8 THE COURT: Mr. Bergrin, we don't need that kind of a
9 question.

10 Q Isn't it a fact that you told the FBI that you proposed a
11 deal to Mr. Curry for \$15,000 a kilogram?

12 A I don't remember that. I'm not denying it. I might have
13 said that. I'm not -- I just don't remember.

14 MR. BERGRIN: May I have one minute, Judge? I'm
15 sorry.

16 THE COURT: That's all right. Go ahead.

17 (There is a pause for Mr. Bergrin.)

18 MR. BERGRIN: May I approach the witness, your Honor?

19 THE COURT: Yes.

20 MR. BERGRIN: May I have an exhibit marked, please?

21 THE COURT: Mark it as D-9.

22 MR. LUSTBERG: Yes, your Honor.

23 MR. BERGRIN: Yes, Judge.

24 I'm showing the witness what has been marked D-9 for
25 identification. It's a FBI 302 dated October 28th, 2010.

1 May I approach?

2 MR. GAY: Judge, I'm not clear what the purpose of
3 this is.

4 THE COURT: Are you trying to refresh his
5 recollection, is that it?

6 MR. BERGRIN: That's 100 percent accurate.

7 MR. GAY: Okay.

8 THE COURT: Ask him to read it and see if that
9 refreshes his recollection as to whether it was 21,000 or
10 15,000.

11 BY MR. BERGRIN:

12 Q I ask you to look at paragraph 2, the ninth sentence down.

13 MR. GAY: Judge, also there's a "J" number at the
14 bottom of it. If he could just put that on the record, what
15 that number is.

16 THE COURT: Let's do that. As soon as he gets it back
17 we'll do that.

18 (There is a pause for the Witness.)

19 A Yes.

20 Q Does that refresh your recollection?

21 A Absolutely.

22 Q So when you told the jury that you proposed a \$21,000
23 price, were you mistaken?

24 A Absolutely not.

25 Q So then you lied to the FBI. Correct?

1 A Absolutely.

2 Q And isn't it a matter of fact that even when you began
3 cooperating, you never changed that figure 15 to \$18,000, and
4 you never told the FBI, hey, you know what, I lied to you
5 before I was cooperating? The amount of the price I proposed
6 was 21,000 instead of 15 to 18, what I told you. Correct?

7 A In the beginning did I lie? Yes.

8 Q My question was: Even when you began cooperating, you
9 didn't tell the FBI that you had lied to them and changed the
10 amount from 15,000 to 21,000, as you say that you allegedly
11 proposed the deal to Mr. Curry. Correct?

12 A I don't -- I don't get the question. I mean --

13 Q Did you ever tell the FBI after you became a cooperator --
14 you understand so far, sir?

15 A Yes.

16 Q After you became a cooperator, did you ever tell the FBI
17 that, you know what, I lied to you about the \$15,000 price per
18 kilo, it was actually 21,000?

19 A After I started cooperating, yes, I came -- I came truth
20 after that.

21 Q And that would be in the 302, correct, after you began
22 cooperating?

23 MR. GAY: Objection, Judge. How does he know it's in
24 a 302?

25 THE COURT: I agree. Sustained.

1 Q Now, you testified that there came time when I called you
2 into my office. Correct?

3 A Correct.

4 Q And I said that you had to go through me if you're setting
5 up a deal. Correct?

6 A Something to that effect, correct.

7 Q And that's with Mr. Curry. Correct?

8 A That's the only one that I knew then that I spoke to.

9 Q And isn't it a fact that you never came back to me to set
10 up any deals with Mr. Curry?

11 A That's correct.

12 Q And I never asked you or proposed anything to you,
13 according to your testimony. Correct?

14 A Correct.

15 Q And I never received a dollar, according to your testimony,
16 or according to what you told the FBI. Correct?

17 A That is correct.

18 Q But you continued to meet with Mr. Curry and propose deals.
19 Correct?

20 A Meet with him? Again, I mean, I don't -- I never met with
21 him again. The only time I seen him was that one time again in
22 the office when he came to see you.

23 Q Well, your testimony was that you tried to call him several
24 times. Correct?

25 A Exactly.

1 Q And you tried to call him to set up cocaine deals.

2 Correct?

3 A That is correct.

4 Q And you didn't go through me like you testified, right?

5 Correct?

6 A No, I did not go through you. That is correct.

7 Q Now, you testified that I was the boss. Is that what your
8 testimony was?

9 A You the boss in the office. I mean, I was -- you my boss,
10 you was my boss, I mean.

11 Q Wasn't Anthony Pope the managing partner of the firm?

12 A Correct.

13 Q And you testified in reference to clients. Weren't at
14 least half our clients police officers and police unions?

15 A Half your clients?

16 Q Yes.

17 A I know -- I don't know if it was half the clients, but I
18 know you had -- I know you had a case -- you had caseloads of
19 law enforcements.

20 Q Now, your memory, name one police officer who we
21 represented?

22 A I don't even remember. I don't -- I know the East Orange
23 Police, one of the East Orange police, I know one of those. I
24 know Bloomfield cops. I mean, this -- you had corrections
25 officers. I mean, but I just don't remember.

1 Q Name one soldier that I represented.

2 A Sergeant Jamar Davis.

3 Q And you worked on that case. Correct?

4 A Correct.

5 Q Now, you testified in reference to the Baskerville file.

6 Correct?

7 A Correct.

8 Q That I asked you to get the Baskerville file. That's what
9 you said. Correct?

10 A That might have been what I said. But I know at the time
11 you told me a lot of file -- I mean, you told me to get these
12 files. I'm sure --

13 Q But your testimony before this jury was -- and it wasn't
14 even that long ago --

15 A Right.

16 Q -- was that I asked you to get the Baskerville file.
17 Wasn't that your testimony?

18 A That is my testimony, yes.

19 Q When you were interviewed by the FBI in this case after you
20 became a cooperator, isn't it a fact that you didn't know the
21 name of Hakeem Curry's cousin? Isn't that a fact, sir?

22 A At the point I didn't know -- I didn't remember his name.
23 All I know, that his name started either with a "D" or "B" with
24 a "V" in it. That's the only thing that I knew. I was always
25 trying to remember what was that name in that file.

1 Q Now when you testified today you said the name
2 "Baskerville."

3 A Exactly, that's what I said.

4 Q Who taught you the name Baskerville?

5 A That's funny, but I was -- I was remembering when my little
6 son -- my little son -- (pause for the Witness).

7 THE COURT: Did you understand the question, Mr.
8 Jimenez?

9 THE WITNESS: Yeah.

10 THE COURT: All right. Can you give us an answer?

11 THE WITNESS: Yeah.

12 THE COURT: All right.

13 THE WITNESS: I remember my little son and playing
14 with my little son shooting a basket.

15 Q You named your little son "Baskerville"?

16 MR. GAY: Judge, if he can answer the question,
17 please, without interruption.

18 THE COURT: No, no, no. He said he saw his son
19 shooting a basket or something?

20 THE WITNESS: I used to play basketball with my son,
21 and me remembering that the name "Baskerville" came to my mind,
22 that's how I remember.

23 THE COURT: And when was that?

24 THE WITNESS: The other day.

25 THE COURT: What's that?

1 THE WITNESS: That was the other day.

2 THE COURT: The other day?

3 THE WITNESS: Yeah. The other day I remembered the
4 name "Baskerville" by remembering playing with my son in
5 Belleville, you know, shooting baskets.

6 BY MR. BERGRIN:

7 Q But whether the FBI interviewed you several months ago, you
8 couldn't give them the name, you didn't remember the name.
9 Isn't that a fact?

10 A That's a fact.

11 Q And as a matter of fact, how old is your son now?

12 A 6.

13 Q And you've been gone for the last five and a half years in
14 prison. Correct?

15 A Correct.

16 Q Almost six years. Correct?

17 A (No response).

18 Q So how were you playing basketball with your son when, he
19 was three months old?

20 A He was two.

21 Q Two months old?

22 A It's only been four years.

23 Q So you were playing basketball with your son at the age of
24 2?

25 A Right. I was showing him how to shoot the ball.