

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

vs.

LARRY GOOCH,

Defendant.

Docket No. CR 04-128

Washington, D.C.
Tuesday, February 13, 2007
9:40 a.m.
Day Eighteen

A.M. SESSION
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE ROSEMARY M. COLLYER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

DARLENE SOLTYS, Esquire
JOHN DOMINGUEZ, Esquire
Assistant United States Attorneys
555 4th Street, NW
Washington, DC 20530
(202) 514-7060
darlene.soltys@usdoj.gov
john.dominguez@usdoj.gov

For the Defendant:

THOMAS T. HESLEP, Esquire
419 Seventh St., NW, Ste. 401
Washington, DC 20004
(202) 428-0293
ttheslep@aol.com

JENSEN E. BARBER, II Esq.
400 Seventh St., NW
Washington, DC 20004
(202) 737-8511
jebbarberpc@aol.com

Appearances continued:

For the Defendant:

JAMES G. CONNELL, III, Esquire
Devine, Connell & Sheldon, P.L.C.
10621 Jones Street
Suite 301-A
Fairfax, VA 22030
(703) 691-8410
JGC3@DEVINECONNELL.COM

Court Reporter:

CRYSTAL M. PILGRIM, RPR
United States District Court
District of Columbia
333 Constitution Avenue, NW
Room 4806-A
Washington, DC 20001
(202) 589-1106
crystalpilgrim@aol.com

Proceedings recorded by machine shorthand, transcript produced
by computer-aided transcription.

3

1 THE DEPUTY CLERK: Criminal action 04-128, United
2 States of America versus Larry Gooch, Jr.
3 Darlene Soltys and John Dominguez for the government.
4 For the defense, Thomas Heslep, Jensen Barber and James
5 Connell.
6 MS. SOLTYS: Good morning, Your Honor. I was advised
7 by the Deputy Marshal that Mr. Martin wanted to talk to me this
8 morning, but I would not be able to go back without the Court's
9 permission.
10 THE COURT: Well, normally, of course, a witness
11 cannot talk to anyone about his testimony once he's taken the
12 stand.
13 MS. SOLTYS: I understand that, Your Honor, and I
14 would not do that. But I don't know what --
15 THE COURT: Right, if there's something other than
16 that the defendant wants to talk to you about -- I'm sorry -- a
17 witness, I'm sorry I misspoke.
18 The record should be clear that in this instance the
19 person we're talking about is the witness. I'll let you go
20 back and I have every confidence that you'll understand the
21 difference.
22 MS. SOLTYS: Thank you, Your Honor. I will not let
23 the Court down.
24 (Pause.)
25 THE COURT: We're running late, you know, because we

4

1 have a juror who got stuck on the subway.
2 You're ready?
3 MS. SOLTYS: Yes, Your Honor.
4 THE COURT: We can get the jury, Ms. White.
5 THE DEPUTY CLERK: Yes, Your Honor.
6 (Jury present.)
7 THE COURT: Good morning everyone. Thank you for
8 making it through the snow and the spitting ice and everything
9 else, welcome back.
10 Good morning.
11 GOVERNMENT WITNESS HERBERT MARTIN SWORN
12 THE COURT: Good morning, sir.
13 MR. CONNELL: Good morning, Your Honor.
14 Before I begin, there's been so much trouble with the
15 microphones, do I need to have some kind of a microphone on?
16 THE DEPUTY CLERK: If you promise to stay at that
17 one.
18 MR. CONNELL: I will do my very best.
19 CROSS EXAMINATION
20 BY MR. CONNELL:
21 Q. Good morning to you, sir?
22 A. Good morning.
23 Q. My name is James Connell, I represent Larry Gooch. I
24 would like to begin by asking you a few questions about who you
25 are.

5

1 Do you understand?

2 A. Yes.

3 Q. You are 40 years old, is that right?

4 A. Yes.

5 Q. And you're known, you have a street name or a nickname,

6 right?

7 A. Yes.

8 Q. That name is Worm or Big Worm?

9 A. Yes.

10 Q. Why is that your nickname?

11 A. That's the name they gave me in the street.

12 Q. The name who gave you in the street?

13 A. Some of my friends in the street that I grew up with.

14 Q. All right. Do you know why?

15 A. Maybe I fit that character was in a movie.

16 Q. What movie was that?

17 A. That's Friday.

18 Q. Are you married?

19 A. No, right now divorced.

20 Q. Do you have any children?

21 A. Yes.

22 Q. How many children do you have?

23 A. I have five.

24 Q. Five children?

25 A. Yes.

6

1 Q. What are their ages?

2 A. The oldest one is 15 to three.

3 Q. So you have people who you love on the outside?

4 A. Yes.

5 Q. And people who love you on the outside?

6 A. Yes.

7 Q. I'd like to you ask a few questions about your history.

8 Do you understand?

9 A. Yes.

10 Q. You grew up in the 8th and H area?

11 A. Yes.

12 Q. Does that neighborhood have a name, just 8th and H?

13 A. Yes.

14 Q. And is that 8th and H Northeast?

15 A. Yes.

16 Q. What was the address of the house that you grew up in?

17 A. 658 G Street Northeast.

18 Q. And you testified that you knew John Franklin from the

19 neighborhood you grew up in, that's the neighborhood you meant,

20 right?

21 A. Yes.

22 Q. The 8th and H neighborhood?

23 A. Yes.

24 Q. You didn't grow up on 18th and M, correct?

25 A. No, I didn't.

7

1 MR. CONNELL: I'm going to have to move away from the

2 microphone to retrieve an exhibit.

3 THE COURT: Go right ahead.

4 BY MR. CONNELL:

5 Q. Can you see this at all, sir?

6 A. Yes, I can see it.

7 Q. Do you recognize this as an aerial photograph of the 18th

8 and M area?

9 A. I look at it as an aerial photograph but I don't know

10 where 18th and M is at on the photograph.

11 Q. If I approach it so that you could read the street names,

12 would that help?

13 A. Sure.

14 MR. CONNELL: May I approach the witness, Your Honor?

15 THE COURT: Yes.

16 BY MR. CONNELL:

17 Q. Sir, did you have an opportunity to look at this aerial

18 photograph?

19 A. Yes.

20 Q. The 8th and H neighborhood, it doesn't appear anywhere on

21 this aerial photograph?

22 A. No, it do not.

23 Q. This is Government's Exhibit 88. Now, sir, you've been

24 selling drugs since you were about 18 years old; is that right?

25 A. Yes.

8

1 Q. So 22 years now; is that right?

2 A. Yes, that's right.

3 Q. That would have been about 1985 that you started selling

4 drugs, correct?

5 A. Yes.

6 Q. That was around the time that crack cocaine started

7 hitting the streets, is that correct?

8 A. Yes.

9 Q. Is that the drug that you sold, crack cocaine?

10 A. Yes.

11 Q. How did you get into selling drugs?

12 A. Just from other friends, you know, introduced me to the

13 drug to make money off of it.

14 Q. Did you begin as a user?

15 A. Naw.

16 Q. So you've never throughout your whole life used crack

17 cocaine?

18 A. No.

19 Q. Just so that the answer to that question is unambiguous,

20 it is correct that you have never used crack cocaine?

21 A. Yes, I've never used crack cocaine as a drug.

22 Q. Why drugs, why was that the, what you chose to do when you

23 were 18?

24 A. That's the decision I made in my life that I regret now.

25 Q. What led you to that decision?

1 A. I guess --
 2 Q. Not a lot of other opportunities?
 3 A. Yeah, not a lot of opportunities and being lazy.
 4 Q. I'd like to bring you forward from 1985 to 1987. In 1987
 5 you were selling crack cocaine, correct?
 6 A. Yes.
 7 Q. At that time you had money?
 8 A. Yes.
 9 Q. From selling drugs?
 10 A. Yes.
 11 Q. Did you have a car at that time?
 12 A. No.
 13 Q. It was a good livelihood for you in 1987 selling drugs?
 14 A. At that time, I believe so, yes.
 15 Q. At one point in 1997 you sold cocaine to an undercover
 16 officer, correct?
 17 A. Yes.
 18 Q. How much weight did you sell to that undercover officer?
 19 A. It was a small quantity.
 20 Q. A small quantity. Like a user quantity?
 21 A. Yes.
 22 Q. Often when people, users of crack cocaine they will often
 23 buy in tiny chips of a rock even?
 24 A. Yes.
 25 Q. often sometimes called a dime?

1 A. Yes.
 2 Q. And a dime is because it sells for \$10, correct?
 3 A. Yes.
 4 Q. A dime is about a tenth of a gram of crack cocaine,
 5 correct?
 6 A. Just about, that's about it.
 7 Q. If you think about one of those Sweet'N Low packets or
 8 sugar packets that you put in your ice tea, do you know what
 9 I'm talking about?
 10 A. Yes.
 11 Q. The amount contained in one of those packets is about a
 12 gram, correct?
 13 A. I don't know what the amount is.
 14 Q. You've been working with drugs all of your adult life,
 15 correct?
 16 A. Yes.
 17 Q. You often worked with weight?
 18 A. Yes.
 19 Q. And more recently you have been working with large weights
 20 like kilograms, right?
 21 A. Yes.
 22 Q. But back in the '80s you worked with small weights like
 23 grams or small parts of a gram, correct?
 24 A. Yes.
 25 Q. You've worked with powder cocaine?

1 A. Not in the beginning, I use to buy it already cooked up.
 2 Q. Through your life you have worked with powder cocaine?
 3 A. Yes.
 4 Q. Powdered cocaine?
 5 A. Yes.
 6 Q. I would like you to think about the amount of powder
 7 cocaine that is a gram, correct?
 8 A. Uh-hum.
 9 Q. That often sells for about a hundred dollars out on the
 10 street, correct?
 11 A. I never sold a hundred grams of powder before.
 12 Q. But you know how much a gram is?
 13 A. Yes, I know how much a gram is on the scale.
 14 Q. When you think about the amount that is a gram on the
 15 scale that's about the same amount that is contained in a
 16 little sugar packet, correct?
 17 A. About.
 18 Q. About right?
 19 A. Yes.
 20 Q. And when you sold to the undercover officer in 1987 what
 21 was the weight, was it as much as a gram or more like a dime, a
 22 tenth of a gram?
 23 A. It was a dime.
 24 Q. A dime?
 25 A. It was cocaine, rock cocaine. It wasn't powder.

1 Q. It was not powder?
 2 A. Was not powder.
 3 Q. At that time when you were arrested by that undercover
 4 officer, was it by a jump out squad?
 5 A. Yes.
 6 Q. You knew that what you had been doing was illegal,
 7 correct?
 8 A. Yes.
 9 Q. You didn't want to go to jail or prison, correct?
 10 A. Yes.
 11 Q. And but at that time you didn't really know what prison
 12 was like, correct?
 13 A. No, I did not.
 14 Q. You had a trial, correct?
 15 A. Yes.
 16 Q. And in that trial you were found guilty of distribution of
 17 cocaine, correct?
 18 A. Yes.
 19 Q. And that was on August 2nd of 1988, does that sound right
 20 to you?
 21 A. Just about. Could have been that time, I'm really not
 22 sure of the date.
 23 Q. If I showed you a copy your National Criminal Information
 24 Center report, would that refresh your recollection?
 25 A. You can. I've never seen it before.

1 MR. DOMINGUEZ: We provided defense counsel with a
 2 certified record. If he just wants to say what it is, I'm sure
 3 we'll stipulate.
 4 MR. CONNELL: August 2nd, 1988.
 5 MR. DOMINGUEZ: We agree.
 6 THE COURT: All right. The parties stipulate.
 7 I'm sorry, you have to tell me the date too.
 8 MR. CONNELL: Yes, Your Honor. That the trial was on
 9 August 2nd, 1988.
 10 THE COURT: All right.
 11 BY MR. CONNELL:
 12 Q. At that trial were found guilty by a jury, correct?
 13 A. Yes.
 14 Q. Then you went to a sentencing proceeding, correct?
 15 A. Yes.
 16 Q. Would it sound correct if I told you that sentencing
 17 proceeding was on September 29th of 1988?
 18 A. Could have been that date.
 19 Q. Okay.
 20 MR. CONNELL: Counsel, you agree with that date,
 21 September 29th, 1988 for the sentencing?
 22 MR. DOMINGUEZ: We don't really dispute, that's fine.
 23 BY MR. CONNELL:
 24 Q. And you received at that sentencing at a sentence called,
 25 what they called in D.C. 20 months to five years, correct?

1 A. Yes.
 2 Q. Now that's the way they do it in the D.C. Superior Court,
 3 correct?
 4 A. Yes.
 5 Q. And that means that there was a, there was a flexible
 6 range of sentencing, correct?
 7 A. Yes.
 8 Q. You had to do at least 20 months on that time?
 9 A. It was a mandatory 20 months.
 10 Q. Mandatory meaning that you had to do it?
 11 A. Yes.
 12 Q. You had to do 20 months, and you could have to do as much
 13 as five years?
 14 A. Yes.
 15 Q. And you understand that's different from the federal
 16 sentencing where you get a straight sentence?
 17 A. Yes.
 18 Q. And back then in 1987 D.C. had a prison of its own,
 19 correct?
 20 A. Yes.
 21 Q. That was in Lorton?
 22 A. Yes.
 23 Q. Down in Fairfax County Virginia?
 24 A. Yes.
 25 Q. That's the prison that you went to?

1 A. Yes.
 2 Q. Now it's fair to say, I don't mean this to be ironically,
 3 but it's fair to say you didn't like the prison, right?
 4 A. No, I didn't.
 5 Q. Lets talk about what it's like in prison for a minute. In
 6 prison the guards control everything, correct?
 7 A. Yes.
 8 Q. They control your movements?
 9 A. Yes.
 10 Q. They control what you eat?
 11 A. Yes.
 12 Q. They control what you can watch on TV?
 13 A. No, not really on that. The inmates can pretty much watch
 14 what they want to watch.
 15 Q. Within a range of channels that you get on a TV?
 16 A. Yes.
 17 Q. You can't get your direct TV or satellite, can you?
 18 A. No, you can't.
 19 Q. They control when you can go from one place to the other
 20 in the prison?
 21 A. Yes.
 22 Q. They control when you get privileges.
 23 What's an example of a privilege at Lorton Prison?
 24 MR. DOMINGUEZ: Objection. Entire line of
 25 questioning is irrelevant and outside of the scope of direct to

1 this witness.
 2 MR. CONNELL: Your Honor, I'll approach if the Court
 3 as any questions about why it's relevant.
 4 THE COURT: No, I can see why it's relevant, it's all
 5 right.
 6 So I would overrule the objection on that scale. So
 7 I'll let you continue.
 8 MR. CONNELL: Thank you.
 9 BY MR. CONNELL:
 10 Q. Do you remember the question, sir?
 11 A. No, repeat the question.
 12 Q. What's an example of a privilege in Lorton Prison?
 13 A. What would be a privilege? Football.
 14 Q. Getting to go out and play football?
 15 A. Yes.
 16 Q. That's a privilege that the guards can take away from you,
 17 correct?
 18 A. Yes.
 19 Q. You're always on a schedule in prison, correct?
 20 A. Yes.
 21 Q. If things get tough, you can't take a trip to Barbados can
 22 you?
 23 A. No.
 24 Q. You can only spend your money in certain ways like at the
 25 canteen?

1 A. Yes.
 2 Q. And it's loud, people are loud all the time?
 3 A. Yeah, sometimes.
 4 Q. You don't get any privacy?
 5 A. No.
 6 Q. You live in a cell?
 7 A. Yes. Right now I do.
 8 Q. And there's only men in the prison?
 9 A. Yes.
 10 Q. And then that doesn't even talk about the other prisoners,
 11 some of the other prisoners are pretty bad aren't they?
 12 A. Yes.
 13 Q. Do horrible things?
 14 A. Talking about where I'm at now?
 15 Q. No, Lorton?
 16 A. Yeah, they do horrible things, yeah.
 17 Q. But when you're in Lorton Prison at least you had the hope
 18 of getting out, right?
 19 A. Yes.
 20 Q. Because you knew that it was a 20 to five year sentence,
 21 right? Twenty month to five year?
 22 A. Yes.
 23 Q. And you actually did get out in 1990, correct?
 24 A. Yes.
 25 Q. What was the first thing you did when you got out?

1 A. You said 1990?
 2 Q. Yes, sir.
 3 From the first time you were in prison?
 4 A. I think I came home in '89.
 5 Q. You got out in 1989 then. What was the first thing that
 6 you did when you got out?
 7 A. I was in the halfway house.
 8 Q. In a halfway house?
 9 A. Yes.
 10 Q. Where was that halfway house located?
 11 A. Langston Lane, it was Hope Village.
 12 Q. What happened when you got out? Could you tell the ladies
 13 and gentlemen of the jury what a halfway house is?
 14 A. Halfway house is when you, you, they control you, not
 15 control you, but they house you there. So you have to report
 16 there, you live there but you go to work. You leave and go to
 17 work every day.
 18 Q. And that makes sense. You got out of the halfway house in
 19 1990; is that right?
 20 A. Yes.
 21 Q. When you were a free man, what was the first thing that
 22 you did?
 23 A. Went home, that's what I did.
 24 Q. Went home and saw your family?
 25 A. Yes, yes.

1 Q. How many children did you have at that time?
 2 A. I had none.
 3 Q. You didn't have any children? What family did you see?
 4 A. My great uncle and my father.
 5 Q. And you didn't want to go back to prison again after that,
 6 correct?
 7 A. Naw.
 8 Q. And you took some steps to try to keep from going back to
 9 prison?
 10 A. Yes.
 11 Q. You got a job?
 12 A. Yes.
 13 Q. You were removing asbestos, right?
 14 A. Yes.
 15 Q. And you tried to make money honestly, right?
 16 A. Yes.
 17 Q. But it just didn't work out right?
 18 A. Didn't work out.
 19 Q. And so in 1991 then the next year you started selling
 20 drugs again, right?
 21 A. Yes.
 22 Q. And selling cocaine again, right?
 23 A. Yes.
 24 Q. And again, sold cocaine to an undercover officer, correct?
 25 A. No, I did not personally, it was a codefendant. I had a

1 codefendant.
 2 Q. You were with somebody?
 3 A. Yes. And he sold.
 4 Q. In a conspiracy who sold to the undercover cop, correct?
 5 A. Yes.
 6 Q. How much weight was sold in that deal?
 7 A. The same thing.
 8 Q. Just a tiny chip.
 9 A. Yes.
 10 Q. A tenth of a gram maybe?
 11 A. Yes.
 12 Q. A dime?
 13 A. Yes.
 14 Q. You have to answer outloud?
 15 A. Yes, a dime.
 16 Q. You were indicted for distribution of cocaine for being a
 17 part of this deal, correct?
 18 A. Yes.
 19 Q. And this time you were offered a plea bargain, correct?
 20 A. Yes.
 21 Q. And that plea bargain was that you got an offer to plead
 22 to a charge called attempted distribution of cocaine, correct?
 23 A. Yes.
 24 Q. And that's kind of a legal fiction, correct?
 25 A. Yes.

1 Q. You didn't really attempt to sell the cocaine, correct?
 2 A. No, I didn't sell it. I gave it to somebody else, they
 3 sold it.
 4 Q. But you knew that the punishment for attempted
 5 distribution of cocaine would be lower than the punishment for
 6 distribution of cocaine, right?
 7 A. Yes.
 8 Q. That's what makes it a plea bargain?
 9 A. Yes, my lawyer gave me, advised me that that would be the
 10 best thing to do.
 11 Q. Sure. You remember how bad prison was?
 12 A. Yeah. I remember that, yeah.
 13 Q. And you knew you were probably going to have to do some
 14 prison time, it was your second time up, correct?
 15 A. Yes.
 16 Q. But you wanted to do as little time as possible, correct?
 17 A. Yes.
 18 Q. So you chose a strategy that would lead to as little time
 19 as possible to take the plea bargain?
 20 A. Yeah, that what I was advised to do.
 21 Q. But ultimately you were the one who made the decision,
 22 right?
 23 A. Yes.
 24 Q. And you were found guilty of attempted distribution of
 25 cocaine on April 7th, 1992, does that sound right?

1 facility they got down there.
 2 Q. Even though it's a different facility, still your life is
 3 controlled by the guards?
 4 A. Yes.
 5 Q. You still --
 6 A. Everything the same.
 7 Q. Everything is the same. Still just as bad as before?
 8 A. Yes.
 9 Q. But again, you had the hope that at least one day you
 10 would get out, right?
 11 A. Yes.
 12 Q. And that hope sustained you through the bad times, didn't
 13 it?
 14 A. Yes.
 15 Q. Now you got out, did you go to a halfway house when you
 16 got out this time?
 17 A. Yes.
 18 Q. Was that in 1993 or 1994?
 19 A. That was 1994.
 20 Q. And what was the first thing -- excuse me. When you got
 21 out of the halfway house, what was the first thing that you
 22 did?
 23 A. Basically the same thing, went to see my family.
 24 Q. People that you loved?
 25 A. Yes.

1 A. No, I pleaded guilty.
 2 Q. Yes and were found, pleaded and were found guilty on
 3 April 7th, correct?
 4 A. Yes.
 5 Q. And then you went to a sentencing again on May 21st of
 6 1992?
 7 A. Yeah, that's about, sounds about right.
 8 Q. This time you got a different sentence. Your sentence
 9 this time was two to five years?
 10 A. Two to six years.
 11 Q. Two to six years?
 12 A. Yes.
 13 Q. Meaning that you had to do at least two years in prison
 14 and might have to do as much as six years in prison, correct?
 15 A. Yes.
 16 Q. Did you go back to Lorton?
 17 A. Yes.
 18 Q. Same as before?
 19 A. Yes, but a different facility.
 20 Q. Where was this facility?
 21 A. This was Central. First time I was in Occoquan.
 22 Q. I'm sorry you were?
 23 A. The first time I went I was in Occoquan.
 24 Q. Occoquan?
 25 A. Yes. And the second time I was in Central, the biggest

1 Q. And you didn't want to go back to prison again?
 2 A. No, I did not.
 3 Q. You tried to go straight again?
 4 A. Yes.
 5 Q. You went into carpentry?
 6 A. Yes.
 7 Q. You in fact started with Martin Carpentry Company, was
 8 that your own business?
 9 A. Yes, yes.
 10 Q. You started but carpentry wasn't really your dream, right?
 11 A. No, music was.
 12 Q. Music was your dream. So to follow your dream you started
 13 Big Worm Productions, right?
 14 A. That was my promotion company.
 15 Q. What does Big Worm -- I'm sorry -- Big Worm Promotions?
 16 A. Yes.
 17 Q. What does Big Worm Promotions do, what did it do?
 18 A. It was really promotions entertainment.
 19 Q. Could tell me the names?
 20 A. Big Worm Entertainments.
 21 Q. Big Worm Entertainments?
 22 A. Yes.
 23 Q. What did Big Worm Entertainments do?
 24 A. I rent out venues for local talent and do my advisement
 25 and throw shows almost like a bigger version of a cabaret. I

1 started doing cabarets, but I moved up getting Chuck Brown, the
 2 local talent and supporting myself that way.
 3 Q. And that was what you really wanted to do, that was your
 4 dream?
 5 A. Yes.
 6 Q. But business wasn't always good was it?
 7 A. No.
 8 Q. Around 2002 business started getting slow at Big Worm,
 9 correct?
 10 A. Yeah, you can say that, yes.
 11 Q. And that's when you started buying crack cocaine again,
 12 correct?
 13 A. 1992?
 14 Q. No, I'm sorry, 2002?
 15 A. 2002, I think I was doing a little bit before then, just
 16 in small quantities, you know, when I needed to.
 17 Q. All right. Well, I'm move forward. I understand you were
 18 buying and selling some small quantities before that. Let's
 19 move up to 2002 if you don't mind.
 20 A. Okay.
 21 Q. In 2002 you were buying quantities of crack cocaine in an
 22 ounce to an ounce and a half, correct?
 23 A. You said 2002?
 24 Q. Yes?
 25 A. Yes.

1 Q. From a guy named Reggie, right?
 2 A. Yes.
 3 Q. He worked in an auto parts store on Georgia Avenue?
 4 A. Yes.
 5 Q. Not part of 18th and M?
 6 A. No.
 7 Q. How much did you pay for an ounce?
 8 A. It varies, you know, he might give me different prices.
 9 No more than a thousand, 750 to a thousand.
 10 Q. When you got the crack, what form was it in?
 11 A. It was already cooked up, it was rock form, hard.
 12 Q. Was it cut up into individual packages?
 13 A. No.
 14 Q. That's what you did, right?
 15 A. No, I didn't break it down in small. I broke it down to
 16 quarter ounces, I'm sorry.
 17 Q. Didn't you in fact sell 50 \$10 rocks for \$250?
 18 A. Yeah, yeah, I forgot that wholesale, yes.
 19 Q. Right. So that means that you were a middle man between
 20 somebody who was supplying the cooked crack rock and somebody
 21 who wanted to sell it to individuals, correct?
 22 A. Yes.
 23 Q. Because the \$10 bag, the dime bag is what an individual
 24 user would buy on the street?
 25 A. Yes.

1 Q. And you would sell sort of a package deal of 50 of those
 2 individual crack rocks to dealers, correct?
 3 A. Yes.
 4 Q. And how much profit did you make on an ounce?
 5 A. Probably about \$300, 3, \$400 at the most.
 6 Q. Then you developed another crack supplier named Mike
 7 Clements?
 8 MR. DOMINGUEZ: Objection.
 9 Your Honor, could we approach?
 10 THE COURT: Yes.
 11 Could you just step down for a second, sir?
 12 (Witness leaves the stand.)
 13 (Bench conference.)
 14 MR. DOMINGUEZ: We object to the line of questioning
 15 as irrelevant when it comes to reciting all of the information
 16 that this defendant has provided in debriefings.
 17 We have no objection to him asking questions about that
 18 he was getting cocaine supplied from other people. But has no
 19 business in this case about all of the other people that he's
 20 debriefed about who were suppliers.
 21 And we have of course no objection if he wants to ask
 22 questions if he's ever been supplied by somebody who was part
 23 of the M Street Crew and/or on indictment. But it's not proper
 24 to go through, through this witness his entire debriefing
 25 history, name by name because that is just irrelevant. We

1 have -- and it leads us into areas that are not properly before
 2 this Court, this jury.
 3 MR. CONNELL: Your Honor, if I correctly parse the
 4 objection out of there, it was fundamentally a relevance
 5 objection.
 6 This is relevant to show he was -- on direct examination
 7 this witness was taken through quite a lot of interactions that
 8 he had that led up to the transition from crack cocaine to PCP.
 9 Which as is I understand from the Government's opening is an
 10 issue in the case. Now his involvement in crack cocaine, about
 11 other people's involvement in crack cocaine it seems to me
 12 substantial.
 13 Second is, the second thing and sort of larger than a
 14 straight 401 analysis is that Mr. Gooch has a Sixth Amendment
 15 right that is very broad for cross examination on bias.
 16 What I'm doing is I'm working up the bias of how much
 17 money he had, just like I did with the first part of this line
 18 of cross examination which did not elicit an objection. It
 19 shows how much money he was making, what a lifestyle he had.
 20 All of which is part of the overall bias picture that I'm
 21 painting of that he's trying to curry favor with the government
 22 to get out of jail and because he had such a good lifestyle
 23 before, he'd like to return to such a good lifestyle.
 24 I want to show what this man lost when he went to prison
 25 and what he has to gain by testifying for the government.

1 THE COURT: Okay, I understood that's where you were
2 going.

3 The issue is whether or not you should be accomplishing
4 your goal, and I have no opposition to your goal, of course,
5 accomplishing your goal by identifying by name each and every
6 person with whom this particular witness has engaged in drug
7 trafficking.

8 I think that can be terribly confusing and misleading
9 for the jury. So we're just trying this case against
10 Mr. Gooch. We're not trying a case against the witness.

11 So I think you need to form your questions in a way that
12 elicits the information you want without dragging every other
13 person he's ever trafficked with through the process. I mean,
14 he has a life --

15 MR. CONNELL: There are only two. There was Reggie,
16 and then there's this individual Mike. Then we move on to
17 people who are directly relevant to the indictment.

18 THE COURT: Okay. Well, in that case --

19 MR. CONNELL: I'm not going to beat it to death if
20 that's what the Court is saying.

21 THE COURT: That's what I'm saying, okay.

22 Then I think it is relevant for purposes of a future
23 argument that this witness doesn't have credibility. That's
24 where you're going.

25 MR. CONNELL: That's where we're going, yes.

1 THE COURT: Absolutely.

2 MR. DOMINGUEZ: We're in a position to stipulate that
3 he --

4 MR. CONNELL: Doesn't have credibility?

5 MR. DOMINGUEZ: No, we're not willing to stipulate to
6 that, but we're in a position to stipulate that he had numerous
7 sources of cocaine.

8 All we want to do is I think to ask the Court to
9 preclude questions about what their individual names were. And
10 some of these --

11 THE COURT: Just use their nicknames, Mike, just use
12 Mike and don't use the last name or anything.

13 MR. CONNELL: That's fine with me.

14 (Open court.)

15 THE COURT: Thank you ladies and gentlemen.

16 (Witness resumes the stand.)

17 BY MR. CONNELL:

18 Q. All right. So we were talking about Mike?

19 A. Yes.

20 Q. If I just call him Mike, do you know who I'm talking
21 about?

22 A. You already said his whole name, so I know who you talking
23 about.

24 Q. Okay, you developed another crack supplier named Mike?

25 A. Yes.

1 Q. And he fronted you crack cocaine, correct?

2 A. Yes.

3 Q. And what it means to front is basically to extend credit?

4 A. Yes.

5 Q. From one drug dealer to another, correct?

6 A. Yes.

7 Q. And he fronted you in units that were called 62s and
8 eighths, correct?

9 A. Yes.

10 Q. Now a 62 is a, it's a, 62 is a unit really only used in
11 the drug trade, right?

12 A. Yes.

13 Q. It means essentially a 16th of a kilogram, correct?

14 A. I believe so, yes.

15 Q. Because it's actually 62.5 grams, correct?

16 A. Yes.

17 Q. And you would buy a 62 for \$1800, correct?

18 A. Yes.

19 Q. And how much would you sell that 62 for?

20 A. I broke it down in quarters, in halves.

21 Q. So when you say, we get sometimes confused because
22 sometimes it's a half is a kilogram, sometimes it's a half but
23 this time it's a half an ounce?

24 A. Right.

25 Q. When you say a quarter you mean a quarter ounce?

1 A. Yes.

2 Q. And on a 62 that you bought from Mike, how much profit
3 would you make after you broke it down?

4 A. Sell a quarter ounce no more than about four, 500.

5 Q. So four, \$500 on a 62?

6 A. Yes.

7 Q. Then you mentioned that he would also front you the
8 quantity of eighths, correct?

9 A. Yes.

10 Q. And the phrase eighth could refer to an eighth of an
11 ounce, an eight ball?

12 A. Yeah, it could.

13 Q. But in this case it means an eighth of a kilogram,
14 correct?

15 A. Yes.

16 Q. And you would buy an eighth of a kilogram for \$3250,
17 correct?

18 A. Yes.

19 Q. And what did you break that up into?

20 A. Same thing.

21 Q. Same thing?

22 A. Yes.

23 Q. Quarters and half ounces?

24 A. Yes.

25 Q. And how much would, how much would you sell those quarters

1 and half ounces for?
 2 A. It all depends upon if he gave it to me already cooked up
 3 in crack form or he gave it to me in powder form. So the
 4 prices varies.
 5 Q. How does that work?
 6 A. Well, if you cook it up, if he give it to me in powder
 7 form, I be able to extend the amount of money I get by cooking
 8 it a certain way.
 9 If he give it to me already cooked up, I'm limited because
 10 I only got about one mass. One solid mass, but if I cook it
 11 up, I can stretch it and get a larger mass.
 12 So in reality I could take a eighth of powder and cook it
 13 up and get an eighth and a 62 extra.
 14 Q. So when you cook up the crack you get sort of 50 percent
 15 bonus of crack over the amount of powder cocaine that you have?
 16 A. Yes.
 17 Q. So let's say that he gave it to you in, let's use the
 18 conservative estimate, let's say he gave it to you in crack, so
 19 an eighth is an eighth?
 20 A. Yes.
 21 Q. When you broke that up into quarter ounces, how many
 22 quarter ounces can you get out of an eighth?
 23 That's the whole problem with the metric English system.
 24 A. About 16, between 16 and 18 quarters.
 25 Q. Okay. Let's say 16 quarters, how much would you sell

1 question again.
 2 Q. You would each put in \$7,000?
 3 A. Yes.
 4 Q. And then you would obtain a kilogram?
 5 A. A kilogram.
 6 Q. And one-half of which each belonged to each of you,
 7 correct?
 8 A. No, I take a kilogram, he would take a kilogram.
 9 Q. Oh, you would each get a kilogram?
 10 A. Yes.
 11 Q. You could buy a kilogram of powder cocaine for \$7,000?
 12 A. Yes.
 13 Q. Once you cooked that up, how would you break it up?
 14 A. If I got the large amount I wouldn't cook it up. I just
 15 sell it.
 16 Q. Sell it as powder?
 17 A. Powder, yes.
 18 Q. Why is that?
 19 A. To get rid of it.
 20 Q. So even though you make more money selling crack with that
 21 kind of quantity, you've got to move your product, right?
 22 A. Yeah, I just want to move it.
 23 Q. What unit would you break the kilogram into?
 24 A. Same thing 62s and eighths.
 25 Q. How much would you sell a 62 for?

1 those quarters for?
 2 A. Two seventy-five.
 3 Q. Two seventy-five. So you would sell the whole thing, so
 4 you would sell it for about \$4500?
 5 A. Yes.
 6 Q. So you make about \$1200 profit?
 7 A. Yes.
 8 Q. On each eighth that you got from Mike, right?
 9 A. Uh-hum.
 10 THE COURT: I'm sorry, you have to answer outloud.
 11 THE WITNESS: I'm sorry.
 12 THE COURT: That's all right.
 13 BY MR. CONNELL:
 14 Q. The answer to that question was yes?
 15 A. Yes, yes.
 16 Q. And you bought from Mike 20 to 30 times, correct?
 17 A. Yes.
 18 Q. And sometimes you and Mike went in together to buy
 19 kilograms, correct?
 20 A. Yes.
 21 Q. You would each contribute \$7,000?
 22 A. Yes.
 23 Q. And you would each get a half kilogram from Jamaica,
 24 correct?
 25 A. Correct -- excuse me, did you say how much? Repeat that

1 A. I would sell it for 16, five.
 2 Q. Sixteen thousand five?
 3 A. No, 1600 and 50 dollars.
 4 Q. Sixteen hundred and fifty dollars?
 5 A. Yeah.
 6 Q. So about 24,000 you would sell that, the whole kilogram
 7 broken up, you would sell it for about 2400?
 8 A. Yes.
 9 Q. You were making \$17,000 on that kilogram deal?
 10 A. Yes.
 11 Q. That was a good deal?
 12 A. Yes.
 13 Q. And you testified on direct examination that you did one
 14 sale for five to 10 kilograms, right?
 15 A. Yes.
 16 Q. Which was it, five or 10?
 17 A. Between that. Between that, the exact number was between
 18 that.
 19 Q. So like eight maybe?
 20 A. Could have been.
 21 Q. Surely you knew at the time?
 22 A. It was different occasions.
 23 Q. Oh, I see. So it was on more than one occasion you sold
 24 between five and 10 kilograms?
 25 A. Yeah, it could have been once or twice.

1 Q. If it's different amounts between five and 10, then that's
2 at least twice isn't it?
3 A. Yes.
4 Q. Okay. When you would sell five kilograms, right,
5 5 kilograms is 10 pounds, or 12 pounds, more than a 10 pound
6 bag of sugar, when you sold that much cocaine how much did you
7 sell it for?
8 A. According to what the price I got it for. Because with
9 that amount of kilograms I was fronted.
10 Q. So you wouldn't make any profit?
11 A. Oh, yeah, I make some profit.
12 Q. You testified on direct you made between 40 and \$50,000
13 profit on that big a sale, correct?
14 A. Yes.
15 Q. We're still in 2002. You meet Abdul Smith in 2002,
16 correct?
17 A. No, I meet him in 2001 I believe.
18 Q. In 2001. And Abdul Smith is supplying you with
19 2 kilograms a week you testified on direct?
20 A. Yes.
21 Q. And you're making about \$4,000 profit per kilo?
22 A. Yes.
23 Q. For six months?
24 A. Yes.
25 Q. And all right. So I want to take you for a moment to

1 the more money you make, the lifestyle that you live in you
2 spend money. And I like, like he said, I got five kids, and
3 also I got three that's not mines, not biology mines but it's
4 eight kids that I'm taking care of. So I know y'all can
5 understand that, eight kids and my lifestyle so 300,000 wasn't
6 nothing to be honest with you.
7 Q. Three hundred thousand is nothing?
8 A. You constantly paying bills, eight kids.
9 Q. Did you send them all to Sidwell Friends? I mean, how
10 much was their tuition? Did they go to public schools?
11 A. Yeah, they go to public schools.
12 Q. I know you didn't buy them a car, they couldn't drive,
13 right?
14 A. No, I didn't buy them a car.
15 Q. What did you buy that cost \$300,000?
16 A. Not all of the money go on the kids. Like I say I got a
17 lifestyle.
18 Q. Okay, and what was your lifestyle?
19 A. You know, dressing good, eating good, and living good.
20 Q. Where did you go eat that cost that much money?
21 A. Nice restaurants like Ruth Chris and, you know, regular
22 spots, Cheese Cake Factory, like elegant restaurants.
23 Q. I would like to talk to you about 2003. 2003 is when you
24 started selling PCP, correct? That's what you testified on
25 direct examination, is that right?

1 Christmas 2002, okay?
2 A. Okay.
3 Q. Take a second. Where were you Christmas 2002?
4 A. I was at home on Christmas.
5 Q. Were your kids with you?
6 A. Yes.
7 Q. So by my math, Christmas 2002, in the year 2002 you have
8 made over half a million dollars from cocaine sales, does that
9 sound right?
10 A. From 2 --
11 Q. In 2002?
12 A. In 2002?
13 Q. Yeah, all of those things you have just told us about?
14 A. No, I didn't make that much money.
15 Q. All right, 400,000?
16 A. Probably, spending money so I can't count, you know, I
17 don't think it was 400. I would have bought me a house to be
18 honest with you.
19 Q. All right, 350, probably?
20 A. It could have been. It was going through my hands quick,
21 you know.
22 Q. At that time you are sitting there with your family,
23 you've made, I don't know how much, but more than any person
24 has a right to make in a year, why didn't you walk away then?
25 A. Well, the more money you make, as I understand y'all know,

1 A. Yeah, about that time.
2 Q. I'm sorry?
3 A. The exact date I don't know.
4 Q. Sure, but 2003, sometime early 2003, does that sound
5 right?
6 A. Yeah.
7 Q. And you sort of switched from selling crack cocaine
8 principally to selling PCP principally, correct?
9 A. Yes.
10 Q. And not everyone in D.C. switched from selling PCP to
11 selling crack to PCP, correct?
12 A. I don't know what everybody else do.
13 Q. Okay, well in 2003 there's still plenty of people selling
14 crack cocaine?
15 A. Yes, a whole lot of people selling crack cocaine.
16 Q. As far as you know still a whole lot of people selling
17 crack cocaine today?
18 A. Yes.
19 Q. Even in the jail?
20 A. In jail, I don't know about jail.
21 Q. Now you still had some dealings with cocaine, right?
22 A. Yes.
23 Q. In 2003?
24 A. 2003?
25 Q. Yes, sir?

1 A. Probably so, I'm not sure.
 2 Q. So for example, when your apartment was searched on
 3 January 28th of 2004 you remember they found a quarter kilogram
 4 of crack cocaine?
 5 A. A quarter? I thought it was a half kilogram.
 6 Q. Two hundred eighty-one grams?
 7 A. You said crack cocaine. It was cooked up, yes.
 8 Q. Yes, yes. You remember they found about an eighth of a
 9 kilo of powder, does that sound right to you?
 10 A. About right.
 11 Q. So you didn't stop dealing with crack in, you didn't stop
 12 dealing with cocaine altogether, right?
 13 A. At that time I had it and to be honest with you, I could
 14 have gotten rid of it, but I sat on it because I was trying to
 15 leave that alone.
 16 Q. Okay. All right. Now you testified on direct examination
 17 that John Franklin and a guy named Ray were your only
 18 customers, correct?
 19 A. Yes, my major customers.
 20 Q. For PCP. In fact, the words you testified on cross
 21 examination it was always just John Franklin and Ray, is that
 22 right?
 23 A. Yes.
 24 Q. Are you saying now that wasn't true?
 25 A. It just, the large quantities.

1 Q. Is Ray known by any other name?
 2 A. Not that I know of.
 3 Q. Now, you were arrested on March 16th. I'm skipping ahead
 4 to a statement that you made just so you follow me.
 5 You were arrested on March 16th of 2004, correct?
 6 A. Yes.
 7 Q. By the FBI?
 8 A. Yes.
 9 Q. The F boys?
 10 A. Yes.
 11 Q. And that was the arrest you are still in jail for today,
 12 right?
 13 A. Yes.
 14 Q. You made a statement to the FBI at that time?
 15 A. To the FBI?
 16 Q. Yes?
 17 A. Yes.
 18 Q. And they typed up your statement, right?
 19 A. Yes.
 20 Q. And they had you read over the statement, correct?
 21 A. Yes.
 22 Q. And you read the statement, right?
 23 A. Yes.
 24 Q. And you said it was true, correct?
 25 A. Yes.

1 Q. You agreed to sign the statement?
 2 A. Yes.
 3 Q. And they didn't make any threats or promises or anything
 4 like that to get you to sign the statement, correct?
 5 A. No. They say it would probably be in your my best
 6 interest to sign.
 7 Q. Be in your best interest.
 8 In that statement you stated and I quote here I primarily
 9 sold PCP to John, who I know from the neighborhood where I grew
 10 up, Skinny from Trinidad and Fat Boy from Capers.
 11 A. From who?
 12 Q. I don't know myself so I will read the statement again.
 13 I primarily sold PCP to John, who I know from the
 14 neighborhood where I grew up, Skinny from Trinidad, and Fat Boy
 15 from Capers?
 16 MR. DOMINGUEZ: Cappers.
 17 BY MR. CONNELL:
 18 Q. C-A-P-P-E-R-S. Is that pronounced Cappers?
 19 A. Yes.
 20 Q. That's the statement that you made to the FBI at that
 21 time, correct?
 22 A. Yes.
 23 Q. Now you testified on cross -- excuse me -- on direct
 24 examination that you were making about \$10,000 profit per
 25 gallon of PCP that you sold, right?

1 A. Yes.
 2 Q. Now when you say a gallon, you're talking about like the
 3 size of a milk jug, a gallon of milk, a gallon of PCP the same
 4 size? Right?
 5 A. Yes.
 6 Q. And Franklin was buying one to two gallons per week from
 7 you, you testified?
 8 A. Yes.
 9 Q. And Ray was buying a half to a gallon per week, correct?
 10 A. Yes.
 11 Q. And how much was Skinny buying?
 12 A. Skinny was Ray. That's who I was calling Ray. At the
 13 time I didn't want to say his name, say his real name, you
 14 know.
 15 Q. So when I asked you just a minute ago was Ray known by any
 16 other names, you said no, you just forgot about Skinny?
 17 A. No, that's what I told the FBI. He ain't known by Skinny,
 18 that's what I told the FBI. That's what I told the FBI.
 19 Q. How much was Fat Boy buying?
 20 A. Fat Boy, that was something that, it was another dude I
 21 was dealing with off and on, I just didn't want to give his
 22 name either.
 23 Q. Let me make sure that I'm tracking this. So when you said
 24 Skinny to the FBI?
 25 A. I was referring to Ray.

- 1 Q. But he's, but Ray is not known as Skinny, correct?
 2 A. No, he wasn't.
 3 Q. That was just a lie you made up to feed the FBI, right?
 4 A. It wasn't a lie. It was trying to protect him. That's
 5 what I was trying to do, trying to protect him.
 6 Q. You were trying to protect him by telling the FBI a lie,
 7 correct?
 8 A. If you want to put it that way, yeah, you could say that.
 9 Q. You would say that too?
 10 A. Yeah, you could say that, yes.
 11 Q. And Fat Boy, he's not a real person either?
 12 A. Yes, he's a real person. I just didn't want to give up
 13 his name. That was Gerald.
 14 Q. Gerald?
 15 A. Yes.
 16 Q. Is Gerald, is his street name Fat Boy?
 17 A. Naw.
 18 Q. So Fat Boy was another name that you made up to feed the
 19 FBI, correct?
 20 A. Yes.
 21 Q. Another lie you told to protect somebody, correct?
 22 A. Yes.
 23 Q. And how much was Fat Boy or Gerald buying from you?
 24 A. He was just getting like 8 ounces.
 25 Q. Per week?

- 1 in in 2003, right?
 2 A. Yeah.
 3 Q. I mean, in a month, some months you would take in a
 4 hundred thousand dollars, right? Profit?
 5 A. Yeah, just about.
 6 Q. All right. That went to support your lifestyle?
 7 A. Excuse me?
 8 Q. That went to support your lifestyle?
 9 A. Yeah, you want to call it, yeah.
 10 Q. And your lifestyle included having two Cadillacs?
 11 A. Yes.
 12 Q. A Chevy Tahoe?
 13 A. Yes.
 14 Q. How many apartments did you have?
 15 A. Two.
 16 Q. You had significant amounts of cash around, correct?
 17 A. Yes.
 18 Q. And I want to make sure that I have this right. On direct
 19 examination you referred to three to \$4,000 as quote a small
 20 amount of money?
 21 A. When you living this lifestyle, it can be a small amount
 22 of money.
 23 Q. I'd like to talk for a moment about sort of the end of
 24 2003 in November, okay. You remember you were played some
 25 tapes yesterday. I'm not going to play them again but I do

- 1 A. Just whenever I was able to give it to him.
 2 Q. So by my calculation tell me if this is not right. You're
 3 selling between two and four gallons per week in 2003, correct?
 4 A. Basically when it comes in that like. Sometimes it don't
 5 come in like that. Sometimes I don't receive it.
 6 Q. Sure. Some are good weeks you get a lot of PCP in, some
 7 are dry weeks you don't get very much in, right?
 8 A. Yes.
 9 Q. Which is why there's a range of how much you sell, right?
 10 A. Yes.
 11 Q. If you are making \$10,000 per, you're making between 20 to
 12 \$40,000 per week, correct?
 13 A. If it comes in like that, yes.
 14 Q. And how many, how long did you make that, were you making
 15 that kind of money? Six months, a year, all of 2003?
 16 A. No, not all of 2003 because we went through a dry spell.
 17 Q. When was your dry spell?
 18 A. I would say, if I can remember I want to say early part of
 19 2003.
 20 Q. Just when you were cranking up selling PCP?
 21 A. Yes.
 22 Q. So slow at the beginning, then it started rolling?
 23 A. Yeah, it got better at the end.
 24 Q. I'm not going to try to figure out exactly how much money
 25 that is, but that is hundreds of thousands of dollars you took

- 1 want to show you on the transcripts, you understand?
 2 A. Uh-hmm.
 3 Q. I'm referring first -- can you get me a microphone.
 4 I'm referring first to Government Exhibit what's in
 5 evidence as Government Exhibit Number 301.4T, from
 6 November 1st, 2003 at 1706 hours.
 7 Can you see that on your little screen there?
 8 A. Yes.
 9 Q. I'd like to take you, to refer you to part that I'm
 10 showing, I'm going to try to use this magic pen that they have
 11 here, so we'll see if it works.
 12 If you see the part that I'm underlining, does that show up
 13 on your screen?
 14 A. Yes.
 15 Q. Could you read that line?
 16 A. Yeah, them boys back, I mean dog, yeah, hear me.
 17 Q. When you say that, you're referring to some sort of law
 18 enforcement who is tailing you, right?
 19 A. Yes.
 20 Q. Can you -- I'm still on 301.4T. And could you read that
 21 paragraph that I marked there?
 22 A. It say but I shook them right, because followed them
 23 myself. I got all up on them, then yesterday they were on me
 24 yesterday too, so hum, I hit -- I can't understand that right
 25 there -- I hit Herman.

1 Q. All right.
 2 A. I hit Herman. People looked it on and he pretty much told
 3 me that hum, they on me hard as a motherfucker -- excuse my
 4 language -- but he don't know where its coming from, you hear
 5 me.
 6 Q. What that means is that when you learned that you were
 7 being followed, you adopted a strategy of following the
 8 followers, right? When you say you got up on them, you
 9 followed the people who were following you?
 10 A. Yeah, at that time, yes.
 11 Q. And why did you do that?
 12 A. Well, to let them know that I knew they was on me.
 13 Q. To intimidate them?
 14 A. No, not at all. I'm sitting right here, I didn't do no
 15 intimidating.
 16 Q. Well, I know it didn't work, but what were you thinking?
 17 A. I don't know at that time everything was going so fast.
 18 When you are living that lifestyle everything go so fast.
 19 Q. Sure. You were kind of scared, right?
 20 A. Yeah.
 21 Q. So the strategy that you chose when you were scared was
 22 this time was sort of go on the offensive to follow them,
 23 right?
 24 A. Yes.
 25 Q. Who is Herman?

1 Exhibit 88 which is the 18th and M area, correct?
 2 A. Yes.
 3 Q. Excuse me for just one second.
 4 (Pause.)
 5 This is another thing that is split across pages, so I'm
 6 going to ask you to read the first few lines that I marked on
 7 301.4T, page 7?
 8 A. Slim I would of fucked it up even worst if them people was
 9 with us, if they ride up on trailor (sic) then. You the only--
 10 Q. I'm turning the page.
 11 A. -- outlet I got, if I need a, a place to run, you the only
 12 way I got, so I'm not gonna burn that up, come on, if you the
 13 only, the only, if you the only spot like that, why I'm going
 14 to fuck that up. When I got, when I get too, when I get too
 15 when I think it's safe, I ain't gonna get to it when I know
 16 that, know they right there behind me.
 17 Q. And the strategy that you're referring to that is keeping
 18 an escape route, that if they come up on you, you can go north
 19 to Abdul, correct?
 20 A. Yes.
 21 Q. And that's one of the strategies that you considered for
 22 avoiding going back to prison, right?
 23 A. Excuse me?
 24 Q. That's one of the strategies that you just outlined there
 25 for how to avoid going back to prison?

1 A. That's my ex-wife uncle.
 2 Q. I would like you to read the paragraph that I'm marking
 3 here. Here on page 2 of 301.4T?
 4 A. Yeah, people said when they saw you and they on a nigger
 5 like that, you number one or two on the hit list, see what I be
 6 doing -- hold up, let me repeat that.
 7 See what I be doing is trying to get situated and you know,
 8 you understand?
 9 Q. What you meant by that was that you knew that you were
 10 high on the investigation priorities, correct?
 11 A. Yes.
 12 Q. All right. I'm on page 3 of 301.4T. I'm going to start
 13 on this page, so I'm going to continue to the next page, but I
 14 want it to make sense for you, so I want to start on this page.
 15 Would you read this last line?
 16 A. Man, that's anything I was going to get ready to tell you.
 17 Q. And then continue at the top of the next page, please?
 18 A. People still ui (sic) right, that spot is on fire.
 19 Q. All right. Then down on that page if you would read what
 20 I'm marking?
 21 A. M Street is on fire.
 22 Q. And then the next line that you say?
 23 A. He said the whole area is under investigation.
 24 Q. Right. And when you referred to M Street here, you're
 25 referring to what's depicted essentially in Government's

1 A. Yes.
 2 Q. To have an escape route?
 3 A. Yes.
 4 Q. Could you read that paragraph which is marked?
 5 A. It say so he like it could be anybody, you know I name
 6 everybody on one motherfucker, hand, so then it say (ui) ain't
 7 like I got a whole brother far, I'm getting ready to switch,
 8 I'm getting ready to get another phone man and hum, I don't
 9 know man, I don't, I don't even know man, only thing I know I'm
 10 spending right and I can't make heads and tails and what you
 11 keep telling me, telling me man, I'm asked the real stuff is
 12 there anyway I can get these boys off me, people, people, said
 13 nah, then it says hum again. Then it says the only way you
 14 going to get them up off you tell them motherfuckers come and
 15 get you, until they get enough on you to come and get you. So
 16 hum, I'm just trying to think of you knowing to keep things
 17 going this way you know. I don't, I been trying to figure that
 18 out. I don't know what to do right now to this point man.
 19 I'm just, I'm just so fucking mad and frustrated man. I'm
 20 just trying not to make the wrong motherfuckin move right now.
 21 Q. When you said that, the thing that you're mad and
 22 frustrated about is the fact that law enforcement authorities
 23 are closing in on you, right?
 24 A. Yes.
 25 Q. One of the strategies that you talked about pursuing is

1 changing phones, correct?
 2 A. Yes, yes.
 3 Q. Now I would like to ask you some questions about what
 4 happened on January 28th, 2004. Do you understand?
 5 A. Yes.
 6 Q. On January 28th, 2004 you were in one of your apartments,
 7 right?
 8 A. Yes.
 9 Q. The apartment on Good Hope Road?
 10 A. Yes.
 11 Q. And to put it mildly, in your apartment on Good Hope Road
 12 there's quite a bit of contraband, right?
 13 A. Yes.
 14 Q. I'm showing you what's in evidence as Government Exhibit
 15 425.5.
 16 What is that, 424.5?
 17 A. That's powder cocaine.
 18 Q. So when we talked earlier about the powder cocaine that
 19 you were still involved with, that this is the powder cocaine
 20 that was found in your apartment, correct?
 21 A. Yes.
 22 Q. And I'm showing you what's been entered into evidence as
 23 Government Exhibit 425.6. What's depicted in that?
 24 A. That's crack cocaine.
 25 Q. So when we talked earlier about the crack cocaine that

1 you're involved with, that's the crack cocaine, correct?
 2 A. Yes.
 3 Q. I'm showing you what's been entered into evidence as
 4 Government Exhibit 425.9. Those are the two gallons of PCP
 5 that came in the FedEx package, is that right?
 6 A. Yes, I believe so.
 7 Q. And finally, I'm showing you what's been marked for --
 8 excuse me -- what's been entered into evidence as Government's
 9 Exhibit 425.7. And that's the three gallons of weak PCP that
 10 were found in your apartment, correct?
 11 A. Yes.
 12 MR. DOMINGUEZ: objection, did you say gallons?
 13 MR. CONNELL: Yes.
 14 MR. DOMINGUEZ: There were smaller quantities than
 15 that.
 16 MR. CONNELL: The witness answered.
 17 THE WITNESS: It look like it's gallons.
 18 BY MR. CONNELL:
 19 Q. Would you like to see the picture again? I'm showing you
 20 again 425.7.
 21 A. Them might be half gallons because of the size of the bag.
 22 Yeah, them might be half gallon bottles.
 23 Q. Okay. Now there was other contraband in your apartment on
 24 January 28th, 2004 that the police didn't find when they
 25 searched, right?

1 A. Excuse me?
 2 Q. There was other contraband in your apartment on
 3 January 28th that the police did not find in that search,
 4 correct?
 5 A. Not that I know of. I thought they got everything out of
 6 there.
 7 Q. I'm showing you what is in evidence as Government's
 8 Exhibit 428.6. Boxes of, 15 boxes of Winchester ammunition was
 9 that in your apartment at the time on January 28th, 2004?
 10 A. That's two different apartments.
 11 Q. This is from the Jill Road --
 12 A. Jill Lane, yes.
 13 Q. Jill Lane. And this Jill Lane search warrant was
 14 conducted on February 4th of 2004, correct?
 15 A. Yes.
 16 Q. As part of your second arrest, the time that you were
 17 charged, right?
 18 A. Yes.
 19 Q. And when you owned this ammunition, you were a convicted
 20 felon, correct?
 21 A. Yes.
 22 Q. And you knew that you could be charged with the crime of
 23 being a felon in possession of a firearm?
 24 A. A firearm, I didn't have no firearm.
 25 Q. Did you know or were you advised that under federal law

1 ammunition is a firearm?
 2 A. No, I didn't know that.
 3 Q. You actually owned a firearm too though didn't you?
 4 A. Yes.
 5 Q. And you knew you could be charged with felon in possession
 6 of a firearm for owning that firearm, correct?
 7 A. Yes.
 8 Q. You also know that it's illegal for a drug dealer to use a
 9 firearm to protect themselves, correct?
 10 A. Yes.
 11 Q. Often called -- does phrase 924 C mean anything to you?
 12 A. No, I don't know that phrase.
 13 Q. Use of a firearm during and in relation to a drug
 14 trafficking offense, you know about that crime?
 15 A. I heard of that one before.
 16 Q. Yes. People get a lot of time for that, right?
 17 A. Yes.
 18 Q. Now on January 28th of 2004 you were expecting two
 19 deliveries that day, correct?
 20 A. I didn't know what was coming in. Abdul had the
 21 deliveries coming in.
 22 Q. You knew at least one delivery was coming in, correct?
 23 A. Yes.
 24 Q. And you already knew people had been following you since
 25 November at least, right?

- 1 A. Yes.
 2 Q. And when the FedEx guy or a person dressed as a FedEx
 3 person knocked on the door and you answered the door, you knew
 4 something was wrong, right?
 5 A. I didn't know something was wrong. I didn't realize
 6 something was wrong until the truck didn't come up the hill.
 7 Q. You saw that guy didn't have a truck, right?
 8 A. Yes.
 9 Q. You even asked him about it, where's your truck?
 10 A. Yes.
 11 Q. He made some excuse to you?
 12 A. He stepped away from the door.
 13 Q. But then you saw another truck coming up the hill and you
 14 knew that truck could get up the hill, right?
 15 A. Yes.
 16 Q. And at what point in that did Abdul say that the cops were
 17 coming?
 18 A. Once the FedEx dude stepped away from the door and he
 19 closed the door I told him something wasn't right. He went to
 20 the patio. He went outside on the patio. At that time I was
 21 trying to put my boots on. And he came outside from the patio
 22 and said the police coming up, the police coming up and I exit
 23 the apartment.
 24 Q. He wanted to run, right?
 25 A. I don't know where he went. I got out the apartment

- 1 first.
 2 Q. You wanted to get out. You wanted to get away from the
 3 apartment, correct?
 4 A. Correct.
 5 Q. You didn't want to be associated with that apartment,
 6 correct?
 7 A. Yes.
 8 Q. You didn't want to be associated with the gallons of PCP
 9 which were in the apartment, right?
 10 A. Yes.
 11 Q. You were scared, right?
 12 A. Yes.
 13 Q. You remember what prison was like, you didn't want to go
 14 back, right?
 15 A. Yes.
 16 Q. And you went down the elevator, correct?
 17 A. Yes.
 18 Q. You were stopped by Lieutenant Pacheco, correct?
 19 A. Yes.
 20 Q. You didn't have any shoes on, correct?
 21 A. Yes.
 22 Q. You told Lieutenant Pacheco asked you about getting off
 23 the elevator, and you told him no, I didn't get off the
 24 elevator, right?
 25 A. I don't remember that statement. That could have been

- 1 said but I don't remember that statement.
 2 Q. He asked you if you came from your apartment, and you said
 3 no, you came from a different floor, right?
 4 A. No, I don't remember that statement either. Because he
 5 grabbed me and brought me back up so why would he ask me that
 6 statement?
 7 Q. In fact, you told him you came from three different
 8 floors, correct?
 9 A. No, they knew which floor I came off.
 10 Q. Sir, I'm not asking what they knew. I'm asking you what
 11 told them?
 12 You told them that you came from a different floor, at
 13 least one different floor, correct?
 14 A. No, I don't remember saying that.
 15 Q. At that time telling the police some kind of a story
 16 seemed like the best way of avoiding going back to prison,
 17 didn't it?
 18 A. Telling them a story? Repeat that question again.
 19 Q. Telling the police some kind of a story seemed like the
 20 best way to try to avoid going back to prison, correct?
 21 A. Well, I couldn't tell them a story because they had me.
 22 Q. Pacheco asked you do you rent that apartment, correct? He
 23 asked you that, do you remember?
 24 A. I don't know who Pacheco is.
 25 Q. The PG County police officer who stopped you?

- 1 He said you rent that apartment don't you?
 2 A. Yes, he asked me that question.
 3 Q. And you told him no, I don't?
 4 A. Yes.
 5 Q. By yes, that is correct, you told him no, that's correct?
 6 A. Yes, I told him no.
 7 Q. So even though they had you, you lied to him that way
 8 didn't you?
 9 A. He didn't have a search warrant. He was asking just going
 10 through the apartment.
 11 Q. I understand that he didn't have a search warrant, but I
 12 do have a question for you. That is that you told him no, I
 13 did not, I don't rent that apartment and that was a lie,
 14 correct?
 15 A. Yes.
 16 Q. Lying seemed like the best strategy at that point didn't
 17 it?
 18 A. Yes.
 19 Q. You couldn't get away on foot so you tried to get away by
 20 lying?
 21 A. Yes.
 22 Q. In fact, he asked you about the apartment and you denied
 23 any knowledge of the apartment, correct?
 24 A. Yes.
 25 Q. And that was a lie?

1 A. Yes.
 2 Q. Seemed like the best strategy at the time?
 3 A. Yes.
 4 Q. And despite your lies they arrested you anyway, correct?
 5 A. Yes.
 6 Q. They took you down to Prince George's County station?
 7 A. Yes. If that's the one at Eastover.
 8 Q. Eastover?
 9 A. Yes.
 10 Q. And you knew what was in that apartment, right?
 11 A. Yes.
 12 Q. And you didn't want to go back to prison?
 13 A. Yes.
 14 Q. And if you got two years for selling a chip, who knows how
 15 long you might get for selling gallons, right?
 16 A. Yes.
 17 Q. And did you realize at, did the PG County police tell you
 18 that they estimated the street value of the FedEx PCP to be
 19 \$102,400?
 20 A. No, they didn't.
 21 Q. They didn't tell you that?
 22 A. No.
 23 Q. They didn't tell you that?
 24 A. No.
 25 Q. Did they tell you they estimated the PCP in the apartment

1 to be \$480,000?
 2 A. No, they did not.
 3 Q. Did they tell you we got you on a whole lot of PCP and
 4 cocaine?
 5 A. They told me that.
 6 Q. What you told the police, what the Prince George's County
 7 police is that you wanted to cooperate with them, right?
 8 A. Yes.
 9 Q. You who had been in the game for so long wanted to be a
 10 cooperator?
 11 A. Yes.
 12 Q. You wanted to provide truthful information, right?
 13 A. Yes.
 14 Q. Because you knew what a box you were in?
 15 A. Excuse me?
 16 Q. You knew how much they had you?
 17 A. Yes.
 18 Q. And you thought that cooperating was the only way out of
 19 the situation you were in?
 20 A. I knew I wasn't going to be out, but I had to pay my dues.
 21 Q. Actually, that night it got you a ride back to your
 22 apartment instead of the jail didn't it?
 23 A. Yes.
 24 Q. And when you talked with, you talked with them there at
 25 the station?

1 A. Yes.
 2 Q. And they wrote out a statement, correct?
 3 A. (No response.)
 4 Q. I'm sorry, sir, I didn't hear the answer?
 5 A. Repeat that again?
 6 Q. They wrote out a statement?
 7 A. I don't remember.
 8 Q. All right.
 9 MR. CONNELL: If I could have this marked, Your
 10 Honor?
 11 THE COURT: Yes.
 12 MR. CONNELL: We're on defense 2; is that correct?
 13 THE COURT: Yes, I believe so.
 14 THE DEPUTY CLERK: Yes.
 15 THE COURT: First one was marked for identification
 16 but not entered.
 17 THE DEPUTY CLERK: Yes, Your Honor.
 18 Defense Exhibit Number 2 marked for identification.
 19 MR. DOMINGUEZ: Is that number two?
 20 MR. CONNELL: Yes, sir.
 21 MR. DOMINGUEZ: What's number 1?
 22 MR. HESLEP: Something I didn't enter. I forget.
 23 MR. CONNELL: Your Honor, may I approach the witness?
 24 THE COURT: Yes.
 25 BY MR. CONNELL:

1 Q. Sir, I'm showing you what's been marked for identification
 2 as Defendant's 2. Would you take a moment to review that
 3 document?
 4 (Pause.)
 5 Sir, have you had the to review what has been marked for
 6 identification as Defendant's Exhibit Number 2?
 7 A. Yes.
 8 Q. Does that refresh your recollection as to whether the
 9 police wrote out a statement on January 28th of 2004?
 10 A. Yes.
 11 Q. So after your recollection has been refreshed I will ask
 12 you the question again.
 13 The police wrote out a statement for you, correct?
 14 A. Yes.
 15 Q. Three page statement?
 16 A. Yes.
 17 Q. And they wrote out this statement after you had told them
 18 you wanted to cooperate and provide them truthful information,
 19 correct?
 20 A. Yes.
 21 Q. They asked you to read the statement, correct?
 22 A. Yes.
 23 Q. They asked you to sign it if it was true, correct?
 24 A. Yes.
 25 Q. You signed it?

1 A. Yes.
 2 Q. And you actually signed the statement that said I quote, I
 3 have read the above statement consisting of three pages. This
 4 statement is true and correct to the best of my knowledge,
 5 correct?
 6 A. Yes.
 7 Q. And you signed underneath that line, correct?
 8 A. Yes.
 9 Q. And they asked you to go through and initial each answer
 10 that you gave in this statement, correct?
 11 A. Yes.
 12 Q. To initial it if it was true, correct?
 13 A. Yes.
 14 Q. Now, they asked you the question referring to the
 15 apartment, did you leave after the box was delivered, correct?
 16 A. Yes.
 17 Q. And you answered yes, correct?
 18 A. I have to see it.
 19 Q. Sure. Would that refresh your recollection?
 20 A. Yes. Can you put it up on the monitor?
 21 MR. CONNELL: With the Court's permission. It's not
 22 in evidence.
 23 THE COURT: No, you can't put it on the monitor.
 24 That's all right. It's not in evidence. But you can show it
 25 to the witness so that you can refresh your recollection.

1 MR. CONNELL: You want to refresh your recollection.
 2 MR. DOMINGUEZ: If they want to move it in, we have
 3 no objection.
 4 MR. HESLEP: Can we come up about that, Judge?
 5 THE COURT: Yes.
 6 Could you step down again, sir?
 7 (Witness leaves the stand.)
 8 (Bench conference.)
 9 MR. HESLEP: This is of course the conundrum that we,
 10 I deal with all the time and lately the way that it's been
 11 happening is that the Judge has told me that it does not
 12 prevent us from making motion for judgment of acquittal just
 13 because we move in evidence during the government's case.
 14 I don't know what your position is on that. I didn't
 15 expect it, I suppose I should have expected it to arise now.
 16 THE COURT: Does the government have a position on
 17 this?
 18 I always thought that if you entered something into
 19 evidence then you couldn't make the motion. Is that true?
 20 MR. CONNELL: Your Honor, my reading of that body of
 21 law is that if the defense introduces evidence in the
 22 government's case in chief, then it is considered as evidence
 23 against the defendant Article 29A, but the defendant can still
 24 make a 29A, but they're kind of stuck with the evidence that
 25 they enter.

1 MR. DOMINGUEZ: I have a recollection that there is a
 2 D.C. Circuit case.
 3 THE COURT: Could I make a suggestion, let's let the
 4 jury go. I was about to interrupt for a break anyway and then
 5 we could talk about it.
 6 MR. HESLEP: The possibility is that you could stand
 7 up and --
 8 (Open court.)
 9 THE COURT: Ladies and gentlemen, we're going to talk
 10 about a nice little legal issue here. It's time for a break
 11 now. So why don't we take a break now, let the jury excuse
 12 itself. We'll talk about the legal issue and plan to come back
 13 about 10 after, okay.
 14 (Jury excused.)
 15 (Open court.)
 16 THE COURT: All right. Thank you. I think this is
 17 one of those areas where my total life unfamiliarity with
 18 criminal law shows up.
 19 It's your position Mr. Connell that you can put an
 20 exhibit into evidence during the government's case and still
 21 make a motion at the close of the government's evidence?
 22 MR. CONNELL: That's right, Your Honor. That is our
 23 position, Your Honor.
 24 THE COURT: Could you please use the microphone?
 25 MR. CONNELL: That is our position, Your Honor. I

1 will be candid with the Court that I have not researched the
 2 D.C. Circuit position on the question. But I do know some
 3 state's law in the Fourth Circuit position on it which is that
 4 there is no waiver of the 29A by introducing evidence in the
 5 government's case.
 6 But a defendant does so at their own risk because that
 7 Defense Exhibit 2 for example, if it were moved in would be
 8 considered as part of the evidence against the defendant in the
 9 29A motion.
 10 THE COURT: I see.
 11 Well, that sounds logical to me which is a little
 12 alarming.
 13 MR. HESLEP: I can tell you that in the District of
 14 Columbia in the D.C. Superior Court that's the position --
 15 THE COURT: That's the rule.
 16 MR. HESLEP: -- that's been developed in the last, I
 17 would say almost 15 years now, but sort of slowly.
 18 THE COURT: Mr. Barber, are you willing to give me
 19 the benefit of your experience?
 20 MR. BARBER: Your Honor, I can find the case.
 21 There's a Circuit case on it, but entering a defense exhibit
 22 during the government's case in chief does not serve the way of
 23 the MJOA argument. I'm sorry, but I'll get you the case law.
 24 THE COURT: No, if you are confident and the
 25 government can cite me law to the contrary, I will accept your

1 confidence because you have many more years in this area of the
 2 law than I do.
 3 So you can then when we return Mr. Connell enter the
 4 exhibit into evidence so that you can use it and show it on the
 5 monitor if that's what you choose to do.
 6 You certainly don't have to. You can refresh his
 7 recollection in the good old fashion way. But you can also
 8 enter it into evidence and it won't interfere with your later
 9 motion.
 10 MR. CONNELL: Thank you.
 11 THE COURT: Thank you. We'll take a break now until
 12 10 after.
 13 Did you have something else?
 14 MS. SOLTYS: Yes. I understand that Mr. Martin
 15 wanted to talk to me again.
 16 THE COURT: All right. And the issue that he's
 17 raising has no nothing to do with his testimony?
 18 MS. SOLTYS: Correct. It has to do with issues of
 19 security.
 20 THE COURT: Okay, go right ahead.
 21 MS. SOLTYS: Thank you.
 22 (Morning recess.)
 23 (Jury present.)
 24 (Witness resumes the stand.)
 25 THE COURT: Welcome back everyone.

1 Q. 1:37 p.m?
 2 A. Okay, yes.
 3 Q. Sir, I'd like to show you, the question which I was
 4 refreshing your recollection on whether you were asked did you
 5 leave after the box was delivered? I'll mark that right there
 6 with an X.
 7 Do you see that question, sir?
 8 A. Yes.
 9 Q. Does that refresh your recollection as to whether you were
 10 asked that question?
 11 A. Yes.
 12 Q. Were you asked the question did you leave after the box
 13 was delivered?
 14 A. Yes.
 15 Q. Did you answer yes?
 16 A. Yes.
 17 Q. And then the line under that. You were asked the question
 18 why did you leave. Is that correct?
 19 A. Yes.
 20 Q. Zoom in a little bit. And your answer is to meet someone?
 21 A. Yes.
 22 Q. That was your answer at that times?
 23 A. Yes.
 24 Q. And after agreeing to cooperate with the police and to
 25 provide them truthful information, that was a lie that you told

1 You can go right ahead, sir.
 2 MR. CONNELL: All right, thank you.
 3 BY MR. CONNELL:
 4 Q. All right. Mr. Martin, when we left off we were
 5 discussing what has been marked for identification as
 6 Defendant's 2 which purports to be a hand written statement by,
 7 written by the police of your statements.
 8 MR. CONNELL: Your Honor, at this time I would move
 9 Defendant's 2, I understand without objection from the
 10 government.
 11 MR. DOMINGUEZ: Yes, no objection.
 12 THE COURT: Yes, it will be admitted into evidence.
 13 MR. CONNELL: Thank you.
 14 THE COURT: Can you give me a date for it, please?
 15 MR. CONNELL: Yes, 1/28/04.
 16 THE COURT: Thank you.
 17 (Defendant's Exhibit Number 2 received into evidence.)
 18 BY MR. CONNELL:
 19 Q. Sir, I'm showing you and I'll zoom in on it so that you
 20 can see it, but I'm showing you what's now been admitted into
 21 evidence as Defendant's 2. I'm going to zoom in a little bit.
 22 I'll show you the date there, sir, 1/28/04, correct?
 23 A. Yes.
 24 Q. And time 1337 hours, correct?
 25 A. I don't know military time, yes.

1 them, correct?
 2 A. Yes.
 3 Q. Because you didn't leave to meet someone, correct?
 4 A. Yes.
 5 Q. You left because you were afraid of going to prison,
 6 right?
 7 A. Yes.
 8 Q. I'll zoom out a little bit. I'm on page 2 of Defendant's
 9 2. Marked page 2 of 3. I'll keep that X there and use it to
 10 maneuver actually.
 11 Do you see the top question on that page? Did you know
 12 there was PCP, phencyclidine inside your apartment?
 13 A. Yes.
 14 Q. Were you asked that question?
 15 A. Yes.
 16 Q. And was your answer I'm not sure?
 17 A. Yes.
 18 Q. After agreeing to cooperate and provide truthful
 19 information to Prince George's County police, that was a lie
 20 that you told them, correct?
 21 A. Yes.
 22 Q. Because in fact, you were quite sure that there was PCP
 23 inside of that apartment?
 24 A. Yes.
 25 Q. The next question you were asked which I'll move the, move

1 to where the X is, have you ever sold PCP, phencyclidine?
 2 Do you remember, recall being asked that question?
 3 A. Yes.
 4 Q. And your answer was no, but I can get it; is that correct?
 5 A. Yes.
 6 Q. So let's parse that into two different parts. The answer
 7 no to have you ever sold PCP, that was a lie, correct?
 8 A. Yes.
 9 Q. And that you told to the Prince George's County police
 10 after agreeing to cooperate and provide truthful information,
 11 correct?
 12 A. Yes.
 13 Q. But the next part but I can get it was sort of a little
 14 hook to the police, wasn't it?
 15 A. Yes.
 16 Q. It was sort of a I can help you out. I can get PCP for
 17 you, correct?
 18 A. Well, I'm just saying I can get it.
 19 Q. The reason why you told the police you could get it is you
 20 wanted them to understand that you were of value to them,
 21 correct?
 22 A. You could think that way, yes.
 23 Q. Because you at that time were trying to devise a strategy
 24 by which you would not go to prison, correct?
 25 A. Yes.

1 Q. And part of that strategy was I'm going to make myself
 2 useful to the police, correct?
 3 A. Yes.
 4 Q. When you agreed to cooperate and provide information what
 5 you were saying was I can go make PCP buys for you, right?
 6 A. It could have worked that way, yes.
 7 Q. It could have worked that way?
 8 A. Yes.
 9 Q. So when you said but I can get it, you were telling the
 10 police in a formal statement that yes, I can go get PCP for
 11 you, correct?
 12 A. Yes.
 13 Q. Then they go on to ask you what else can you get. I'll
 14 move the X. See that, what else can you get?
 15 A. Yes.
 16 Q. You tell them everything?
 17 A. Yes.
 18 Q. Heroin?
 19 A. Yes.
 20 Q. Cocaine and Ecstasy?
 21 A. Yes.
 22 Q. Marijuana?
 23 A. I'm not sure about the marijuana.
 24 Q. Let me show you, move the X off.
 25 Do you see the portion of, on page 2 of Defendant's 2 which

1 is marked with an X? Question, can you get marijuanas?
 2 A. Yes.
 3 Q. So marijuana?
 4 A. Yes.
 5 THE COURT: The question is what was the answer?
 6 BY MR. CONNELL:
 7 Q. Okay, what was your answer?
 8 A. Yes, I can get marijuana, yes.
 9 MS. SOLTYS: Did you see this --
 10 BY MR. CONNELL:
 11 Q. Let me show you this and see if you can actually read your
 12 answer. I understand what people are asking. I'm going to
 13 zoom in and maybe that will help us.
 14 THE COURT: why don't you bring it up a little higher
 15 on the Elmo.
 16 MR. CONNELL: The problem is that this part of the
 17 Elmo is in the way.
 18 MR. DOMINGUEZ: May I?
 19 MR. CONNELL: Yes, I gratefully accept instruction.
 20 THE WITNESS: I don't know what I was writing there.
 21 BY MR. CONNELL:
 22 Q. Does that say no problem to buy or get, what does it say?
 23 A. No, it don't say that. It say no, to -- I don't know what
 24 I was writing at that time.
 25 Q. Oh, is this your handwriting, sir?

1 A. Yes.
 2 Q. I didn't realize this. I thought it was the police's
 3 handwriting. So this entire document was written in your own
 4 hand?
 5 A. No. This statement right here at the bottom that I
 6 initialed, that's what I'm reading. The question is can you
 7 get marijuana that the police wrote.
 8 Q. What was your answer? We've interpreted the answer as
 9 yes, what did you actually write?
 10 A. It says no, but I'm trying to make out the rest of it.
 11 Can't make out the rest of it. I don't know what I was trying
 12 to write at that time.
 13 Q. Did you tell the police you could get marijuana or you
 14 told them no, I cannot get marijuanas?
 15 A. Well, the statement says no. But probably at that time I
 16 could have, I could not. Could have been according to what I
 17 knew at that particular time. Could vary.
 18 Q. So you're suggesting that in fact you could get marijuana
 19 but you told the police no, you couldn't?
 20 A. It varies on what, who I, varies on who I knew at that
 21 particular time.
 22 Q. I'm not questioning whether you could or couldn't get
 23 marijuana. I'm asking what you told the police.
 24 Is it your testimony that --
 25 A. What I wrote says no. So apparently at that time I

1 probably could not. The rest of it I can't make out what I
 2 was, can't make out what I was trying to write.
 3 Q. All right. Now, and I want to make sure that I can
 4 understand your testimony so that we have a clean record on it.
 5 You've now seen and I will show you the exhibit. You have
 6 now reviewed Defense Exhibit 2, right?
 7 A. Yes.
 8 Q. Is this your handwriting on this document?
 9 A. Yes.
 10 Q. Just so there's no question that the police wrote it down
 11 wrong?
 12 A. Excuse me?
 13 Q. There's no question that the police wrote your answers
 14 down wrong?
 15 A. No.
 16 Q. It was your handwriting?
 17 A. Yes.
 18 Q. And when you pursued that strategy with the police, it
 19 actually got you out of jail that day on January 28th, 2004,
 20 correct?
 21 A. Yes.
 22 Q. They drove you home?
 23 A. Yes.
 24 Q. And you weren't charged with anything that day?
 25 A. No, I wasn't.

1 got PCP you can get off the street. This PCP isn't going to
 2 hurt anybody. It would have been a perfect opportunity
 3 wouldn't it?
 4 A. Could have been, yes. Could have.
 5 Q. But what you decided to do instead of calling the police
 6 and telling them about this PCP that had just been delivered,
 7 is you decided to sell it to John Franklin instead?
 8 A. Yes.
 9 Q. You didn't call the detectives?
 10 A. No, I didn't.
 11 Q. And eventually the detectives realized that you had
 12 tricked them, right?
 13 A. I believe so, I believe so.
 14 Q. And they came to arrest you on February 4th of 2004,
 15 correct?
 16 A. Yes.
 17 Q. And you had a number of charges, and I won't go through
 18 them but there were several charges later cocaine, PCP, the
 19 crack, correct?
 20 A. Yes.
 21 Q. And that bond for you to get out was a hundred thousand
 22 dollar, right?
 23 A. Yes.
 24 Q. Such a large bond that one single bonding company, one
 25 single bail bondsman could not post such a large bail, correct?

1 Q. And when you got home, and your house is trashed or your
 2 apartment is trashed there's a UPS package?
 3 A. Yes.
 4 Q. You thought it was another controlled delivery, you're
 5 like all right guys, you got me, right?
 6 A. Yes.
 7 Q. And you set the PCP outside -- it actually contained PCP,
 8 right, the delivery?
 9 A. Yeah, it did contain PCP, yes.
 10 Q. So you set the PCP outside, right outside your door?
 11 A. Yes.
 12 Q. After a while no police came?
 13 A. Yes.
 14 Q. And so you realized well, I must have been wrong, the UPS
 15 guy must have been telling the truth, it was not a controlled
 16 buy, correct?
 17 A. Yes.
 18 Q. And you realized you had two gallons of PCP that the
 19 police didn't know about, right?
 20 A. No. It wasn't two gallons, it was a half gallon.
 21 Q. You had a half gallon of PCP that the police didn't know
 22 about, correct?
 23 A. Yes.
 24 Q. And that would have been the perfect opportunity to
 25 cooperate with the police, wouldn't it? Call the police, hey I

1 You had to go through two bond companies?
 2 A. I didn't actually post the bond, so I don't know.
 3 Q. Somebody, Cherell posted the bond for you, correct?
 4 A. Yes.
 5 Q. And you posted the bond the same day that you were
 6 arrested, right?
 7 A. I think it was the next day.
 8 Q. Okay. You posted the bond the next day after you were
 9 arrested, correct?
 10 A. Yes.
 11 Q. And to go to, the way the bondsman work for a \$100,000
 12 bond you had to post a hundred, excuse me, \$10,000 cash,
 13 correct?
 14 A. Yes.
 15 Q. You pay that as a premium to a bondsman, you never see
 16 that money again, correct?
 17 A. Yes.
 18 Q. And the two different bondsmen, they posted bond to the
 19 Court guaranteeing that you will appear, correct?
 20 A. Yes.
 21 Q. So there was enough money lying around that Cherell could
 22 just go pick up \$10,000, take it down to two bondsmen and get
 23 you out, right.
 24 A. No, it wasn't enough money laying around. A friend of
 25 mines gave me that.

1 Q. Then you got arrested, you're out on bond from Prince
 2 George's County then you got arrested again on March 16th?
 3 A. Yes.
 4 Q. That was by the Feds, you don't get a bond in the federal
 5 court?
 6 A. No.
 7 Q. No amount of money will get you out?
 8 A. No.
 9 Q. And you're locked up in the D.C. Jail?
 10 A. I'm locked up at CTF.
 11 Q. CTF?
 12 A. Yes.
 13 Q. CTF, excuse me. At the bottom of Massachusetts Avenue is
 14 a D.C. Government complex, correct?
 15 A. What you say?
 16 Q. There's a government complex D.C. Government complex,
 17 correct?
 18 A. CTF, that's what you referring to?
 19 Q. Yes, yes?
 20 A. Yes.
 21 Q. Actually, there's a whole campus of buildings there?
 22 A. Yes.
 23 Q. St. Elizabeth's is there?
 24 MS. SOLTYS: No.
 25 BY MR. CONNELL:

1 Q. I'm sorry. The office of Chief Medical Examiner is there?
 2 A. I'm not sure of the office.
 3 Q. The D.C. Jail is there?
 4 A. Yes.
 5 Q. There's a thing right next to the D.C. Jail called CTF,
 6 correct?
 7 A. Yes.
 8 Q. Which is also a correctional facility?
 9 A. Yes.
 10 Q. And you were taken to that jail on March 16th after
 11 talking to the FBI, correct?
 12 A. I was taken to D.C. Jail.
 13 Q. To D.C. Jail?
 14 A. Yes. I was moved to CTF, that's where I'm at now.
 15 Q. Okay. So on March 16th, 2004 you were in D.C. Jail?
 16 A. Yes.
 17 Q. Before you were taken to the D.C. Jail you talked to the
 18 FBI, correct?
 19 A. Before I was moved to the D.C. Jail, say that again?
 20 Q. Sure on March 16th, 2004 before you were taken to the D.C.
 21 Jail you met with the FBI agents, correct?
 22 A. Yes.
 23 Q. FBI agents asked you questions, correct?
 24 A. Yes.
 25 Q. You told them about Skinny, correct?

1 A. Yes.
 2 Q. You told us that Skinny was really just a cover for
 3 another friend of yours named Ray, right?
 4 A. Yes.
 5 Q. You talked to them about Fat Boy, right?
 6 A. Yes.
 7 Q. Which was just a cover, a lie for another friend of yours?
 8 A. Yes.
 9 Q. Named Gerald?
 10 A. Yes.
 11 Q. Shortly after and I'm not going to ask you what was said.
 12 But shortly after March 16th, 2004 you met with an attorney,
 13 correct?
 14 A. Yes.
 15 Q. Mr. Conte?
 16 A. Yes.
 17 Q. Is he present today?
 18 MS. SOLTYS: No. I'm sorry, I thought you turned to
 19 us.
 20 THE WITNESS: No, he's not here.
 21 BY MR. CONNELL:
 22 Q. When you were making decisions about your case, you knew
 23 that the government they had you dead to right, right?
 24 A. Yes.
 25 Q. You knew that you couldn't bond out?

1 A. Yes.
 2 Q. You knew that the evidence against you was strong?
 3 A. Yes.
 4 Q. You knew that the quantities of drugs were large?
 5 A. Yes.
 6 Q. You knew you couldn't deny the evidence against you?
 7 A. Yes.
 8 Q. You knew that you were, there was a substantial chance you
 9 were going to go to a federal prison for the rest of your life?
 10 A. Yes.
 11 Q. You knew you only had one choice to avoid that outcome
 12 which was to plead and cooperate, correct?
 13 A. Yes, that's what my attorney told me that was the best
 14 decision that I had.
 15 Q. All right.
 16 MR. CONNELL: Does the Court want to comment on what
 17 his attorney told him. I don't feel in the position to give
 18 him advice, but I don't want him to waive anything that he
 19 doesn't want to waive.
 20 THE COURT: Right. The conferences between you and
 21 your attorney are privileged. You don't have to testify about
 22 them if you don't want to.
 23 THE WITNESS: Okay.
 24 THE COURT: It's your privilege and you can testify
 25 about them if you choose to do so but then you waive the

1 privilege and you can be questioned about all of them. So
 2 normally, a client doesn't speak specifically.
 3 Now if you're saying a general statement the attorney
 4 told me this was a good idea, that's fine because that's not a
 5 quote from him.
 6 THE WITNESS: Okay, general, that was a general
 7 statement then.
 8 BY MR. CONNELL:
 9 Q. All right, that's fine. I won't ask you any more
 10 questions.
 11 After having these conversations with your attorney, after
 12 coming to understand the evidence against you, you entered a
 13 plea agreement with the government, correct?
 14 A. Yes.
 15 Q. And that agreement has been entered into evidence as
 16 Government Exhibit 701.1, correct?
 17 A. Yes.
 18 Q. Would you like an opportunity to review it before I ask
 19 you questions about it? I'll show you on the monitor since it
 20 is evidence, but do you want to look at it first?
 21 A. No, go ahead.
 22 Q. This plea agreement sets out a number of duties and
 23 obligations of both you and the government, correct?
 24 A. Yes.
 25 Q. And also explains the relationship between you and the

1 government, correct?
 2 A. Yes.
 3 Q. Now, I'd like to ask you some questions about that. I'd
 4 like to begin with do you see and I'll zoom in because you
 5 probably can't see.
 6 Can you read that?
 7 A. Yeah, I can see.
 8 Q. Do you see in that it's in a number of paragraphs, number
 9 of paragraphs, numbered paragraphs?
 10 A. Yes.
 11 Q. Do you see numbered paragraph one?
 12 A. Yes.
 13 Q. I would like you to read the second sentence, please,
 14 which begins your client understands. Let me explain that
 15 first.
 16 This is actually although it is an agreement or a contract,
 17 it's actually written as a letter to your attorney, correct?
 18 A. Yes.
 19 Q. So when it says your client, you understand that the you
 20 to be your attorney, right?
 21 A. Yes.
 22 Q. Would you read the second sentence which begins your
 23 client understands?
 24 A. Agreed to admit guilt and enter a plea of guilty to the
 25 Count of 1 of the indictments which charge your client with

1 conspiracy to distribute and possess with intent to distribute
 2 one kilogram or more of what's the correct --
 3 THE COURT: PCP, Phencyclidine.
 4 THE WITNESS: PCP.
 5 THE COURT: Phencyclidine. Hard to pronounce.
 6 THE WITNESS: For violation of the code, they got the
 7 code there.
 8 BY MR. CONNELL:
 9 Q. Would you read the next sentence which begins your client
 10 understands?
 11 A. Your client understands that pursuant to the Code in 846
 12 charge carries a term of imprisonment of not less than 10 years
 13 or more than life. A fine not exceeding the greater of the
 14 penalty, permit by Title 18 of the United States Code of
 15 400,000, that's 400,000.
 16 Q. Four million I think?
 17 A. Four million. And the terms of supervision release of at
 18 least five years.
 19 Q. Okay. So let's talk about what that means and what you
 20 understood at the time that you entered that agreement.
 21 You understand that different crimes have different
 22 penalties associated with them, correct?
 23 A. Yes.
 24 Q. The penalty for conspiracy to distribute PCP or drugs of
 25 any kind has a sentencing range of a minimum of 10 years and a

1 maximum of life in prison, correct?
 2 A. Yes.
 3 Q. Now you understand that that is the, what we call the
 4 statutory range, the range set by a statute, correct?
 5 A. Yes.
 6 Q. There's this code section that you talked about 21 U.S.C.
 7 846. And it has this is the penalty by statute, correct?
 8 A. Yes.
 9 Q. And so what you understand that to mean is assuming that
 10 nothing else happens like a 5 K because we are going to get to
 11 that, but assuming there's no 5 K, then the Court has to
 12 option, no authorization by law other than to impose a sentence
 13 less than 10 years?
 14 A. Yes.
 15 Q. For that matter, they don't have authorization to impose a
 16 sentence greater than life such as the death penalty, correct?
 17 A. Yes.
 18 Q. I'm going to show you, mark this as best I can.
 19 Do you see, do you see the mark that I just put on the
 20 screen?
 21 A. Yes.
 22 Q. I'd like you to read that sentence that begins there your
 23 client further understands?
 24 A. Says your client further understands that the United
 25 States sentencing guidelines.

1 Q. I don't know how to move that cursor manually?

2 A. Sentencing guidelines parenthesis will apply to the

3 determination your client guidelines range and that pursuant

4 and Section E, I mean 5 E 1.2 of the sentencing guidelines,

5 sentencing guidelines. The Court may also impose a fine that

6 is suffocate.

7 Q. Sufficient.

8 A. Sufficient to pay the federal government the costs of any

9 imprisonment. The term of supervision release and the period

10 of probation.

11 Q. Okay. So I want to talk to you for a moment about what

12 you understood that to mean at the time that you entered this

13 plea agreement. Now we just talked a minute ago about that

14 there's a statutory range set by statute of 10 years to life

15 for this penalty, right?

16 A. Yes.

17 Q. But you also understood that there is separate and on top

18 of the sentencing range, there are sentencing guidelines that

19 help a Judge determine what sentence to impose within that

20 range, correct?

21 THE COURT: I'm sorry, that's not a correct statement

22 so I cannot let the witness respond to it.

23 MR. CONNELL: Can the Court would let me know in what

24 respect it's incorrect, I'll rephrase.

25 THE COURT: It's not on top of.

1 MR. CONNELL: I see. Okay.

2 BY MR. CONNELL:

3 Q. In addition to the sentencing range set by statute that we

4 just talked to, 10 to life, you understand and you understood

5 --

6 THE COURT: I'm sorry, it's not really in addition

7 to. I'm sorry, ladies and gentlemen.

8 The question has to be correct before the witness can --

9 why don't you just come forward for a second.

10 MR. DOMINGUEZ: We had an objection already.

11 THE COURT: Would you step down, sir?

12 (Witness leaves the stand.)

13 (Bench conference.)

14 THE COURT: The guidelines aren't on top of the

15 statute. The guidelines are a separate regiment for

16 sentencing.

17 MR. CONNELL: That's fine.

18 THE COURT: But it's not, but you have to -- now what

19 is your objection?

20 MR. DOMINGUEZ: I can't think, I can't remember back

21 that far even though it's two years, but I think -- when did

22 the Booker case come out?

23 MR. CONNELL: January, 2006.

24 THE COURT: No Booker is --

25 MR. DOMINGUEZ: Blakely.

1 MR. CONNELL: Blakely came out 2005.

2 MR. DOMINGUEZ: This plea agreement was signed March

3 of 2004.

4 THE COURT: Right.

5 MR. DOMINGUEZ: So we're getting in, the sentencing

6 guidelines were mandatory then. They're not mandatory now, and

7 we object.

8 THE COURT: I don't think that you can have this

9 witness who spent all of that time in jail necessarily answer

10 the legal question what are the guidelines, were they mandatory

11 then and are they mandatory now.

12 MR. CONNELL: All I'm going to ask is his

13 understanding. I'm not going to get into the fine point of

14 Blakely, Booker.

15 THE COURT: But my interruption to you was that I

16 don't want the jury to think that the sentencing guidelines

17 that you get a minimum of 10 years under the statute and you

18 get additional time, that's the problem. You were --

19 MR. CONNELL: I understand. I can address it.

20 MR. DOMINGUEZ: And we have a standing objection to

21 asking this witness to try to give his legal opinion as of the

22 impact of all of the Supreme Court case law.

23 THE COURT: No, no, he won't.

24 MR. CONNELL: I won't do that.

25 THE COURT: Thank you.

1 (Witness resumes the stand.)

2 (Open court.)

3 BY MR. CONNELL:

4 Q. We just talked about that there is a statute which sets a

5 minimum and a maximum that any judge can impose for the crime

6 for which you were convicted, right?

7 A. Yes.

8 Q. You understand that there is a document entitled the

9 Federal Sentencing Guidelines Manual which was referenced in

10 your plea agreement, correct?

11 A. Yes.

12 Q. You understand that the, you understand that the Federal

13 Sentencing Guidelines provide guidance to a judge of what

14 sentence to impose within the statutory minimum and maximum?

15 A. Yes.

16 Q. Correct. Now it's not a, you don't get two separate

17 sentences right, you get one sentence from a judge, and that

18 sentence has a minimum and a maximum, correct?

19 A. Yes.

20 Q. And you understand that within that minimum and maximum

21 the sentencing guidelines provide guidance to the Court?

22 A. Yes.

23 Q. This is not the first time that you have talked about the

24 sentencing guidelines, is that correct?

25 A. Excuse me?

1 Q. Before you entered this plea, you understood what you
 2 expected your sentencing guidelines to be, correct?
 3 A. Yes.
 4 Q. And you understand that there have been some changes in
 5 the law which change the way that the sentencing guidelines are
 6 applied, correct?
 7 A. What do you mean by that? I don't understand the
 8 question.
 9 MR. DOMINGUEZ: We object thereafter.
 10 THE COURT: Right. I just --
 11 MR. CONNELL: That's all right. We'll do that part
 12 through another witness.
 13 THE COURT: I don't think that this witness can
 14 answer those legal questions.
 15 BY MR. CONNELL:
 16 Q. Well, that's fine.
 17 You understand or you understood that at the time that you
 18 entered this plea that there is a guideline which governs
 19 drugs, correct?
 20 A. Yes.
 21 Q. In the same way there may be a guideline that governs tax
 22 crime and fraud everything else, there's one that governs
 23 drugs, correct?
 24 A. Yes.
 25 Q. And you understand even if you don't know all of details

1 that the weight of the drugs involved determine a, determine a
 2 level within the sentencing guideline, correct?
 3 A. Yes.
 4 Q. That was your understanding at the time you entered this
 5 plea?
 6 A. Yes.
 7 Q. Do you happen to remember what offense level 70 kilograms
 8 of PCP is?
 9 A. No, I don't remember.
 10 Q. Did you know it at one time? You knew it before you
 11 entered your plea did you?
 12 A. I think it's under the level, I want to say --
 13 Q. I'm not going to ask you to guess. I just want to ask
 14 you, you knew that at the time you entered your plea, correct?
 15 A. I believe so.
 16 Q. If I showed you the relevant sentence pages of the
 17 sentencing guidelines would that refresh your recollection?
 18 THE COURT: I'm sorry, I'm not going to have you
 19 question this witness on legal matters.
 20 MR. CONNELL: I'm questioning solely on his
 21 understanding, Your Honor. I laid a foundation that he knew it
 22 at one time and it might refresh his recollection to review the
 23 document, that's all the document requires.
 24 MR. DOMINGUEZ: We would stipulate that he's at the
 25 maximum level.

1 THE COURT: Why don't we stipulate.
 2 MR. DOMINGUEZ: Under the sentencing guideline range
 3 for that offense of conviction for drugs.
 4 MR. CONNELL: Would you further stipulate that it's a
 5 38?
 6 THE COURT: Well, the maximum is higher than --
 7 MR. DOMINGUEZ: It's a 38 but there's more points.
 8 THE COURT: There's more points. I mean, that's the
 9 problem. If you did a guideline sentence it would be more than
 10 38.
 11 MR. CONNELL: Okay. So the stipulation is more than
 12 38. Thirty-eight or higher?
 13 THE COURT: Right.
 14 MR. CONNELL: Is that good?
 15 THE COURT: That's good.
 16 MR. CONNELL: Does the Court get that stipulation as
 17 your little notes?
 18 THE COURT: I'll put it in my little notes.
 19 MR. CONNELL: All right, very good, Your Honor.
 20 Thank you.
 21 BY MR. CONNELL:
 22 Q. And you further understood at the time that you entered
 23 this plea agreement that there is a, that there's a chart, a
 24 sentencing chart, correct?
 25 A. Yes.

1 Q. And the sentencing chart can go, you can go down the chart
 2 for offense level how serious the offense is?
 3 A. Yes.
 4 Q. And you can go across the chart for how bad your criminal
 5 history is, correct?
 6 A. Yes.
 7 Q. And you understood that there is such a thing as a career
 8 offender provisions, you could be a career offender under the
 9 guidelines.
 10 Did you understand that at the time?
 11 A. Yes.
 12 Q. You understood that because you had two prior drug
 13 offenses you were a career offender, correct?
 14 A. Yes.
 15 Q. You understood that that put you in the worse criminal
 16 history category, category number six, correct?
 17 A. Yes. You say category six?
 18 Q. Yes, sir.
 19 MR. DOMINGUEZ: And just -- I'm sorry to object
 20 again. It's just, it's prior drug trafficking felony offenses,
 21 not simple possession.
 22 MR. CONNELL: Yes, that's right. I'll rephrase the
 23 question.
 24 MR. DOMINGUEZ: No.
 25 THE COURT: That's asking this witness another legal

1 question. I understand what you're trying to do. You're
2 trying to elicit from him what he knew his risk was. Why don't
3 we just ask him that.

4 MR. CONNELL: All right.

5 BY MR. CONNELL:

6 Q. Sir, I'm going to show you for demonstrative purposes?

7 THE COURT: No. Why don't you just ask him what his
8 risk was.

9 MR. CONNELL: All right.

10 BY MR. CONNELL:

11 Q. You knew that the sentencing guidelines in your case
12 called for a sentence between 360 months and life in prison,
13 correct?

14 A. Yes.

15 Q. And 360 months is 30 years, correct?

16 A. Yes.

17 Q. Now I'm returning to, I have one more question about that.
18 So you understood at the time you entered this plea that if
19 there was no 5 K 1 motion that you would receive a sentence
20 between 30 years and life in prison, correct?

21 MR. DOMINGUEZ: Objection.

22 MR. CONNELL: I'm asking what his understanding was.

23 THE WITNESS: My understanding was 10 to life.

24 THE COURT: All right. Now you got your answer. His
25 understanding was 10 to life.

1 MR. CONNELL: All right.

2 BY MR. CONNELL:

3 Q. Did you have any understanding about the sentencing
4 guidelines?

5 A. I was understanding because this is my first federal case.
6 My first federal charge. I was just use to the old D.C. law.
7 I'm not use to this.

8 Q. You testified earlier that you knew that you were at
9 substantial risk of receiving a life sentence for this offense,
10 correct?

11 A. Yeah, now I do, yes.

12 Q. And you know that there's a, regardless of what your
13 guidelines are, there's a substantial risk of you going to
14 prison for a life sentence, correct?

15 A. Yes.

16 Q. And even if you received a sentence of 30 years, that
17 would still be a long time to a 40 year old man, correct?

18 A. Yes.

19 Q. I'm returning to, sir, I'm returning to Government Exhibit
20 701.1. The plea agreement. I'm going to mark -- you see the
21 mark that I made on the screen, sir?

22 A. Yes.

23 Q. Do you see the sentence which begins further your client
24 understands by the mark?

25 A. The mark is right there on 5 E 1.2.

1 Q. I'm sorry, you're right. There's a cursor and a mark.
2 Let me move this cursor now.

3 A. Okay, right there.

4 Q. Do you see it now, sir?

5 A. Yes.

6 Q. Further, your client understands --

7 A. Yes.

8 Q. Read that sentence?

9 A. It say further your client understands that he has two or
10 more convictions for a crime of violence felony drug offense
11 and qualifies him for substance --

12 Q. Substantial?

13 A. -- substantial higher guideline penalties providing for
14 him career offense provision of the sentencing guidelines.

15 Q. That's that career offender thing that we just talked
16 about; is that right?

17 A. Yes.

18 MR. CONNELL: Your Honor, in Government Exhibit 701.1
19 I'm turning the page to page 2, paragraph six A.

20 BY MR. CONNELL:

21 Q. Mr. Martin, can you read, do you see paragraph six A?

22 A. Yes.

23 Q. Would you read the first sentence?

24 MR. DOMINGUEZ: Objection. I think the witness has
25 demonstrated he knows how to read. The whole thing would go

1 faster if counsel would just read the document already admitted
2 into evidence and then ask the witness because this is --

3 MR. CONNELL: Your Honor, for good or ill

4 Mr. Dominguez can examine the witnesses the way that he wishes
5 and I feel that I can examine witnesses the way that I wish.

6 THE COURT: You certainly can. But I could say that
7 the document is admitted into evidence so it speaks for itself
8 and we don't need to have the witness read it. Now, I could do
9 it that way too.

10 I think why don't we adopt Mr. Dominguez' approach and
11 have you read the document and have the witness say yes, that's
12 what it says.

13 MR. BARBER: Your Honor, can we approach?

14 THE COURT: Yes.

15 Would you step down, please?

16 (Witness leaves the stand.)

17 (Bench conference.)

18 MR. BARBER: I respectfully disagree. Your Honor,
19 this man has adopted this. He said he signed it. It is his
20 plea agreement and he can be -- the government went through
21 extensive, he pleaded guilty. Mr. Conte was his lawyer. He
22 looked in the courtroom, Mr. Conte is here.

23 We have had tremendous direct on this. It would be err
24 for this Court not to allow Mr. Connell to continue to ask this
25 man about his knowledge of the plea agreement.

1 THE COURT: I'm not saying anything about his ability
2 to ask him questions.

3 But we are spending an enormous amount of time on
4 sentencing guidelines for instance that was totally, as far as
5 I can see, unnecessary. And we're spending a tremendous amount
6 of time for a witness who cannot read as well as Mr. Connell or
7 you. Wait, wait, wait.

8 I'm not interrupting any question you want to ask him
9 about what his understanding was. But I am saying you don't
10 have to have him read from the document which is already in
11 evidence. That is a different issue.

12 You can ask him any question you want, you can take from
13 now until the cattle come home. But to have him read directly
14 from a document that's already in evidence is a waste of time.
15 You can read the document, you can have him adopt it, say yes,
16 that's what it says and then you can ask him any question you
17 want about what his understanding was.

18 It seems to me I'm not interfering in the least with the
19 questions to this witness about what he understood and whether
20 he signed the document. I think you have led a great
21 foundation here. You can go on with it as long as you want.

22 MR. CONNELL: I'm just trying to be efficient.

23 MR. HESLEP: Can I say something?

24 THE COURT: No, I can't have three lawyers arguing.

25 MR. BARBER: I object to Mr. Dominguez standing,

1 testifying and making standing objections five minutes in
2 length with everything that he doesn't agree.

3 THE COURT: All right. I think that is fair.

4 We should not have arguments in front of the jury.

5 Mr. Connell, it's your examination, you get to speak.

6 MR. CONNELL: I simply wish to observe with respect
7 to the time with regard to the issue. This is the first
8 witness that, who is a cooperator and our intention was to be
9 very careful with this witness so that the Court, the jury
10 would understand the issues and then that will allow us to be
11 much briefer with the following witnesses.

12 THE COURT: Then I appreciate that heads up. Thank
13 you very much.

14 MR. CONNELL: Yes.

15 (Open court.)

16 (Witness resumes the stand.)

17 BY MR. CONNELL:

18 Q. Mr. Martin, can you see paragraph six A on the monitor?

19 A. Yes.

20 Q. On page 2. It provides your client shall cooperate fully,
21 truthfully, completely and forthrightly with this office and
22 other federal, state and local law enforcement authorities
23 identified by this office in any and all matters as to which
24 the government deems the cooperation relevant.

25 Is that what that document says?

1 A. Not in paragraph six, it didn't say all of that.

2 Q. Six A?

3 A. Six A at the bottom. Oh, I was reading --

4 Q. Yes, sir?

5 A. Yes.

6 Q. What you understood that to mean is that you had signed a
7 contract to provide information to cooperate and provide
8 truthful information to the government on any matter that they
9 want to ask you about, correct?

10 A. Yes.

11 Q. And you understood the phrase any and all matters as to
12 which the government deems the cooperation relevant means that
13 the government gets to do the picking, they get to pick what
14 you are to answer about, correct?

15 A. I believe so, yes.

16 MR. CONNELL: Your Honor, I'm on page 3 of
17 Government's Exhibit 701.1.

18 BY MR. CONNELL:

19 Q. Do you see the first full sentence which begins any
20 refusal by your client?

21 A. Which one?

22 Q. The first word is answering questions, and then there's a
23 sentence, but then that's full, the first full sentence is any
24 refusal by your client.

25 MR. DOMINGUEZ: You mean line two?

1 MR. CONNELL: The end of line two, yes.

2 BY MR. CONNELL:

3 Q. Maybe I could put a mark there, it might help?

4 A. Yeah, it would. Okay.

5 Q. Do you see what I'm talking about, sir?

6 A. Yes.

7 Q. That sentence provides any refusal by your client to
8 cooperate fully, truthfully and forthrightly as directed by
9 this office and other federal, state and local law enforcement
10 authorities identified by this office in any and all matters in
11 which the government deems your client's assistance relevant
12 will constitute a breach of this agreement by your client and
13 will relieve the government of its obligations under this
14 agreement including but not limited to its obligations to file
15 a departure motion pursuant to Section 5 K 1.1 of the Federal
16 Sentencing Guidelines and/or 18 U.S.C. 3553 (e).

17 Is that what that says?

18 A. Yes.

19 Q. What you understood that to mean at the time you entered
20 this plea was that if the government decides that you have not
21 cooperated fully, truthfully, completely and forthrightly, then
22 they could walk away from agreement, correct?

23 A. Yes.

24 Q. Do you see what's marked paragraph D? Let me get rid of
25 this other mark. Do you see paragraph D there, sir?

1 A. Yes.
 2 Q. If provides your client shall testify fully -- excuse me
 3 -- fully, completely and truthfully before any and all grand
 4 juries in the District of Columbia and elsewhere and at any and
 5 all trials of cases or other court proceedings in the District
 6 of Columbia and elsewhere at which your client's testimony may
 7 be deemed relevant by the government?
 8 A. Yes.
 9 Q. You understood that to mean that under this contract that
 10 in order for the government to hold up their end of the bargain
 11 you had to testify whenever and wherever they wanted you to
 12 testify?
 13 A. Yes.
 14 Q. This one is a little long for which I apologize, but it's
 15 paragraph seven. Down there at the bottom. Do you see it?
 16 A. Yes.
 17 Q. I'm going to read it to you, if you could follow along.
 18 It provides, your client understands that the determination of
 19 whether your client has provided substantial assistance
 20 personal to either Section 5 K 1.1 of the sentencing guidelines
 21 or 18 U.S.C. Section 3553 (e) as more fully explained later in
 22 this agreement is within the sole discretion of the United
 23 States Attorney's office for the District of Columbia and is
 24 not reviewable by the Court.
 25 Your client understands that if the government does not

1 investigation or prosecution of another person who has
 2 committed a federal, state, local or any other offense.
 3 That's what it says, right, in your contract?
 4 A. Yes.
 5 Q. And what that contract provides is that there's nothing
 6 that you can do. You can't come to Judge Collyer and say I
 7 deserve a downward departure, correct?
 8 A. Yes.
 9 Q. You've made an agreement not to do that?
 10 A. Yes.
 11 Q. Only the government gets to do that?
 12 A. Yes.
 13 Q. The next sentence which is on page 4 of 701.1. In the
 14 same paragraph that next sentence, Mr. Martin, provides your
 15 client agrees and acknowledges that the failure of this office
 16 to file a substantial assistance departure motion shall not be
 17 grounds for your client to move to withdraw your client's plea
 18 of guilty in this case or otherwise relieve your client of his
 19 or her obligations under this agreement.
 20 Is that what it provides?
 21 A. Yes.
 22 Q. And the phrase, you understand the phrase substantial
 23 assistance departure motion to be the same thing as 5 K or 5 K
 24 1.1, correct?
 25 A. Yes.

1 file a motion for downward departure, the Court has no
 2 authority to grant a downward departure either under Section 5
 3 K 1.1 of the sentencing guidelines or under 18 U.S.C. 3553 (e).
 4 Is that what that document says?
 5 A. Yes.
 6 Q. Let's talk for a little bit about what you understood that
 7 to mean.
 8 You understood as you testified on direct Section 5 K 1.1
 9 to be a provision of the sentencing guidelines which allows the
 10 government to file a motion for a lighter sentence essentially?
 11 A. Yes.
 12 Q. And you understood Section 3553 E to be a provision under
 13 which the government can file a motion to have a sentence lower
 14 than the mandatory 10 years, correct?
 15 A. Yes.
 16 Q. And what you understood paragraph, those first two
 17 sentences in paragraph seven to be is that the government gets
 18 to decide whether to file that 5 K motion for you?
 19 A. Yes.
 20 Q. Is that right? It's their decision?
 21 A. Yes.
 22 Q. In fact, the next sentence provides and I'm at the next
 23 sentence on paragraph seven, in any event your client
 24 specifically agrees not to seek a downward departure without
 25 government motion based on any assistance provided in the

1 Q. It's the downward departure that let's you get a lesser
 2 sentence if the government decides to follow it, correct?
 3 A. Yes.
 4 Q. What you understood this provision to mean was that you
 5 don't have an escape valve? You can't withdraw your plea of
 6 guilty. You can't walk away from the agreement, correct?
 7 A. Correct.
 8 Q. I'd like to direct your attention to paragraph nine. I'll
 9 try to move, I'd like to read to you the second sentence in
 10 that paragraph line which is your client also agrees --
 11 A. Yes.
 12 Q. Your client also agrees that the sentencing in this case
 13 may be delayed until your client's cooperation has been
 14 completed, as determined by the government, so that the Court
 15 will have the benefit of all relevant information before
 16 sentence is imposed. Your client understands that the date for
 17 sentencing will be set by the Court?
 18 A. Yes.
 19 Q. That's what that document says?
 20 A. Yes.
 21 Q. First of all, you understood that that means that the
 22 government gets to decide about your cooperation, correct, they
 23 get to make the decision as to whether you have cooperated and
 24 whether your cooperation is complete, correct?
 25 A. Yes.

1 Q. And you further understand that that means that they can
 2 delay your sentence; that is, the time at which the 5 K 1
 3 motion will be filed, as long as they want? You understand
 4 that?
 5 A. Yes.
 6 Q. Or truthfully as long as the Court sets, it says the Court
 7 says, as long as the Court allows, correct?
 8 A. Yes.
 9 Q. And so I just want to take you back for a second to your
 10 two prior charges.
 11 In the first time that you were arrested there was about
 12 six weeks between the time you had your trial and the time you
 13 were sentenced, correct?
 14 A. Not sure but I know it was pretty close.
 15 Q. Pretty close. The second time that you were arrested
 16 there was about six weeks between your plea of guilty and your
 17 plea bargain and the time you were sentenced, correct?
 18 A. Could have been.
 19 Q. Pretty close?
 20 A. Yes, pretty close.
 21 Q. What date did you plead guilty?
 22 A. On March 31st, I believe, '04.
 23 Q. Of '04?
 24 A. Yes.
 25 Q. So we're coming up on the third year anniversary between

1 your plea of guilty and your sentencing?
 2 A. Yes, March the 16th will be 36 months, will be three
 3 years.
 4 THE COURT: Mr. Connell --
 5 MR. CONNELL: Yes?
 6 THE COURT: I don't want to interrupt, but could you
 7 just stay a little closer to the microphone?
 8 MR. CONNELL: Certainly.
 9 BY MR. CONNELL:
 10 Q. In Government's Exhibit 701.1, I'm going to turn to
 11 paragraph 15, this is a bit of a long one. Do you see where I
 12 am?
 13 A. Yes.
 14 Q. Your client understands and agrees that if your client
 15 should fail to specifically perform and fulfill fully and
 16 completely each and every one of your client's obligations
 17 under this plea agreement, then A, the government will be free
 18 from its obligations under the agreement including but not
 19 limited to its obligation to file a departure motion pursuant
 20 to Section 5 K 1.1 the sentencing guidelines and/or 18 U.S.C.
 21 Section 3553 E.
 22 B, your client will not be allowed to withdraw your
 23 client's guilty plea.
 24 C, your client shall be fully subject to criminal
 25 prosecution for any other crimes which your client has

1 committed or might commit, if any, including perjury and
 2 obstruction of justice.
 3 D, no motion for downward departure will be filed or sought
 4 and your client will be sentenced within the applicable
 5 sentencing guideline range.
 6 And E, the government will be free to use against your
 7 client directly and indirectly in any criminal or civil
 8 proceedings any of the information or materials provided by
 9 your client pursuant to this agreement or during the course of
 10 the debriefings conducted in anticipation of this agreement
 11 regardless of whether those debriefings were previously covered
 12 by an off the record agreement by the parties.
 13 Is that what it says?
 14 A. Yes.
 15 Q. What you understand that to mean is that if the government
 16 decides that you have breached this agreement and have not
 17 provided, cooperated and provided truthful information, if in
 18 their sole discretion they decide that you haven't done that,
 19 then all bets are off?
 20 A. Yes.
 21 Q. They get to, you get the higher sentence. They get to
 22 prosecute you?
 23 A. Yes.
 24 Q. You have to answer outloud.
 25 A. Yes.

1 Q. They are relieved of their duties under the agreement?
 2 A. Yes.
 3 Q. Now I would like to direct your attention to paragraph 16,
 4 paragraph 16 on page 5 of Government's Exhibit 701.1. It
 5 provides in light of the sentencing guidelines applicable to
 6 your defendant, this office agrees not to file an information
 7 pursuant to 21 U.S.C. 851 A, is that what it says?
 8 A. Yes.
 9 Q. Now you understood 851 A to be a provision -- would you
 10 like some water, ma'am?
 11 (Juror coughing.)
 12 Sir, do you remember that provision that I'm talking about
 13 in paragraph 16?
 14 A. Yes.
 15 Q. You understood that to mean that there is a provision in
 16 the law which raises the minimum sentence for people who have
 17 prior felony crimes of violence or of drug trafficking,
 18 correct, you understand that?
 19 A. Yes.
 20 Q. And you understood that if the, understood that if the
 21 government had filed an information pursuant to Section 21
 22 U.S.C. 851 A then the minimum sentence in your case would have
 23 gone from 10 years to 40 years, correct?
 24 A. Yes.
 25 MR. DOMINGUEZ: Objection. That's not accurate. He

1 faced a statutory --
 2 THE COURT: Wait, wait, wait. Can you come forward?
 3 Can you please step down?
 4 (Witness leaves the stand.)
 5 (Bench conference.)
 6 MR. DOMINGUEZ: No, he faced life in prison.
 7 MR. CONNELL: I accept my correction.
 8 MS. SOLTYS: Since we are up here, there is one other
 9 thing that is that he refers to the 5 K as a mechanism by which
 10 the defendant gets a lower sentence. That's not actually
 11 accurate either.
 12 It's a mechanism by which the mandatory minimum sentence
 13 or the statutory minimum is then removed and the Court still
 14 has the --
 15 THE COURT: It's only a 3553.
 16 MR. CONNELL: I did distinguish between the two.
 17 THE COURT: These are all legal questions but you can
 18 go back.
 19 MR. DOMINGUEZ: We have made a consideration decision
 20 not to object at this time.
 21 THE COURT: Right.
 22 Thank you, sir.
 23 BY MR. CONNELL:
 24 Q. Mr. Martin, I stand corrected. You actually understood
 25 that if the government had filed the information pursuant to

1 Section 851 A that is mentioned in paragraph 16 that you would
 2 have received a mandatory life sentence with no chance for a
 3 term of years?
 4 A. Yes.
 5 Q. Sir, I'm turning your attention to paragraph 18 on page 6
 6 of the agreement. Which provides this office will inform the
 7 departure guideline committee of the United States Attorneys
 8 office for the District of Columbia about the nature and extent
 9 of your client's cooperation.
 10 Is that what it provides, sir?
 11 A. Yes.
 12 Q. You understood that to be that these individual
 13 prosecutors do not make the decision, there's a committee that
 14 makes the decision, correct?
 15 A. Yes.
 16 Q. Paragraph 19 provides if the departure guideline committee
 17 of the United States Attorneys office for the District of
 18 Columbia after evaluating the full nature and extent of your
 19 client's cooperation determines that your client has provided
 20 substantial assistance, then this office will file a departure
 21 motion pursuant to Section 5 K 1.1 of the sentencing guidelines
 22 in order to afford your client an opportunity to persuade the
 23 Court that your client should be sentenced to a lesser period
 24 of incarceration and/or fine mandated by the sentencing
 25 guidelines.

1 However, notwithstanding a determination by the departure
 2 guideline committee of the United States Attorneys office for
 3 the District of Columbia that your client has provided
 4 substantial assistance in the event your client should fail to
 5 specifically perform and fulfill completely each and every one
 6 of your client's obligations under the plea agreement, then the
 7 government will be free from its obligations under the
 8 agreement including but not limited to its obligation to file a
 9 departure motion pursuant to 5 K 1.1 of the sentencing
 10 guidelines and/or 18 U.S.C. Section 3553 (e).
 11 Is that what that provision provides?
 12 A. Yes.
 13 Q. Do you understand that to mean that first, they get to
 14 make the determination whether substantial assistance has been
 15 provided, correct?
 16 A. Yes.
 17 Q. And if they determine that you didn't provide substantial
 18 assistance in their sole discretion, then they can they can
 19 walk away?
 20 A. Yes.
 21 Q. You don't get to walk away from the deal. But if they
 22 determine that you have not provided them substantial
 23 assistance, then they get to walk away from the deal?
 24 A. Yes.
 25 Q. Paragraph 20 provides, your client understands and

1 acknowledges, however, that even if the Departure Guideline
 2 Committee of the United States Attorneys office for the
 3 District of Columbia determines that your client provided
 4 substantial assistance in the investigation or prosecution of
 5 another person for purposes of Section 5 K 1.1 of the
 6 sentencing guidelines, this office reserves its right to
 7 decline to file a departure motion pursuant to 18 U.S.C.,
 8 Section 3553 (e). In the absence of the motion under 18 U.S.C.
 9 3553 (e), the Court will be required to sentence your client to
 10 at least the mandatory minimum period of incarceration, if any,
 11 which applies to the offense or offenses of conviction even if
 12 the Court decides to depart from the applicable guideline
 13 range.
 14 In the event this office in its sole discretion decides to
 15 file a departure motion pursuant to both Section 5 K 1.1 and 18
 16 U.S.C. Section 3553 (e), your client will be afforded an
 17 opportunity to persuade the Court that he should be sentenced
 18 to a lesser period of incarceration than otherwise statute
 19 required by the sentencing guidelines or any applicable
 20 mandatory minimum sentence established by statute.
 21 That is basically the same provision but about the
 22 mandatory, minimum under 3553 (e), is that your understanding?
 23 A. Yes.
 24 Q. So we have been through a lot of legalese in this document
 25 but I would like to sum up fundamentally what your

1 understanding of this document is.
 2 Fundamentally you understood that at the time you entered
 3 this and you understand today that given the amount of drugs
 4 that were in your possession, you face a substantial risk of
 5 going to the prison for the rest of your life, correct?
 6 A. Yes.
 7 Q. And unless the U.S. Attorneys office in its sole
 8 discretion decides that you are providing truthful testimony
 9 and substantial assistance, you're going to prison for the rest
 10 of your life?
 11 A. Yes.
 12 Q. And that you have testified on direct examination that you
 13 are hoping and praying that they will exercise their ultimate
 14 power of filing the 5 K 1.1 motion, correct?
 15 A. Yes.
 16 Q. Because unless they do, you know that you very well might
 17 die alone in prison?
 18 A. Yes.
 19 MR. CONNELL: I have no further questions, Your
 20 Honor.
 21 THE COURT: All right. Thank you very much.
 22 Is there any redirect?
 23 MR. DOMINGUEZ: Yes.
 24 REDIRECT EXAMINATION
 25 BY MR. DOMINGUEZ:

1 Q. When did you sign the plea agreement?
 2 A. It was March the 31ST, '04.
 3 Q. How many weeks after your arrest for the federal charges
 4 was that?
 5 A. I think about two weeks, just about two weeks.
 6 Q. When you made that decision to sign and enter into that
 7 plea agreement and enter into this agreement and plead guilty
 8 before Judge Collyer, did you know what your options were?
 9 A. Pertaining to the 5 K 1?
 10 Q. No, I'm talking about -- let me ask it more basically.
 11 Did anyone make you sign that plea agreement?
 12 A. Oh, no.
 13 Q. You were charged by indictment, on March 16th, 2004, yes
 14 or not?
 15 A. Yes, I was indicted.
 16 Q. So the charges were already placed against you?
 17 A. Yes.
 18 Q. By the time you had been arrested?
 19 A. Yes.
 20 Q. What were your options in facing these charges, what could
 21 you have done?
 22 A. Do life in jail or take a plea bargain?
 23 MR. HESLEP: Objection, Your Honor, counsel
 24 interrupted his own witness.
 25 THE COURT: All right, you can proceed.

1 MR. HESLEP: I didn't hear his answer.
 2 THE COURT: That's all right. You can proceed.
 3 BY MR. DOMINGUEZ:
 4 Q. Could you have gone to trial?
 5 A. Yes.
 6 Q. And take your chances with the jury?
 7 A. Yes.
 8 Q. Could you have pled guilty?
 9 A. Yes.
 10 Q. No bargains, just admit your guilt, accept responsibility
 11 and take whatever sentencing hit you take?
 12 A. Yes.
 13 Q. Could you have pled guilty and negotiated an agreement to
 14 cooperate and hope for a sentencing departure through
 15 cooperation?
 16 A. Yes.
 17 Q. What other options did you have?
 18 A. That was it.
 19 Q. If any?
 20 A. There was no more.
 21 Q. That's it?
 22 A. Yes.
 23 Q. Which option did you choose?
 24 A. To take the plea bargain and to cooperate.
 25 Q. And did you have the assistance of counsel in making that

1 decision?
 2 A. Yes.
 3 Q. After you signed that plea agreement and agreed to
 4 cooperate truthfully, forthrightly, and completely, did you
 5 provide interviews or debriefings with agents of the government
 6 of the United States, law enforcement agents specifically?
 7 A. Yes, I did do debriefings.
 8 Q. Do you know how many times you talked to them?
 9 A. No, I don't know.
 10 Q. On March the 16th of 2004, did you provide an interview
 11 with law enforcement, federal agents of the United States?
 12 A. Yes.
 13 Q. That was before you signed the plea agreement?
 14 A. Yes.
 15 Q. On March the 23rd of 2004 did you debrief?
 16 A. Could have been, yes, because I did go up.
 17 Q. On May the 19th of 2004, did you debrief?
 18 A. Yes, I could have been, yes.
 19 Q. Did you keep track of how many interviews you had with
 20 prosecutors like myself and Ms. Soltys, Special Agent Richard
 21 Stallings or Joe Sopata from the FBI Safe Streets Task Force,
 22 did you keep track of them?
 23 A. I know it was a lot of them but I don't know the number.
 24 Q. A lot of them?
 25 A. Yes.

1 Q. Were you aware that in some of those debriefings that
2 agents or officers were writing down or making notes about
3 your, the substance of your debriefings?
4 A. I'm not sure anybody was writing. I don't know what they
5 was writing down.
6 Q. Do you remember in the beginning of cross examination
7 Mr. Connell asked you a series of questions about your early
8 days of drug dealing. And all of those people you got cocaine
9 for, from. And all of those people you sold cocaine to, and
10 how much money you were making off of cocaine and in what
11 volumes of cocaine, crack, mostly that you were dealing with,
12 all of the way from 1988 to let's start, say 2002.
13 Were you aware of that?
14 A. Yes.
15 Q. Do you know where he got all of that information?
16 A. No.
17 Q. Do you know whether that information every debriefing
18 statement that --
19 MR. HESLEP: Objection, Your Honor, this is leading
20 as it gets.
21 THE COURT: You are leading. Please reform your
22 questions.
23 Could I just talk to counsel, please.
24 MR. HESLEP: Sure.
25 THE COURT: I'm sorry, Mr. Martin, but could you step

1 down?
2 (Witness leaves the stand.)
3 (Bench conference.)
4 THE COURT: Is this Mr. Connell's witness? This is
5 Mr. Connell's witness. So he has to make the objections.
6 MR. HESLEP: Now, it seems to me, Judge --
7 THE COURT: It was a good objection.
8 I'm sustaining the objection, but it's his witness not
9 yours.
10 MR. HESLEP: All right. At this point I want to
11 alert the Court to something that I see might be coming and I
12 -- if the Court will let me do that, I might be able to head it
13 off.
14 THE COURT: What's that?
15 MR. HESLEP: It's this, in some of his debriefings
16 this man lied, the issues that I can prove, if counsel is going
17 to ask him I don't think that we addressed some of those. I
18 think Mr. Connell left out some of that stuff that we
19 intentionally sort of left out.
20 But if Mr. Dominguez intends to ask this man whether he
21 told the truth all the time, you know, he has said under oath
22 that he didn't. If he says something different here, I would
23 expect to be able to examine on that.
24 THE COURT: You will not be able to examine.
25 MR. HESLEP: Mr. Connell.

1 THE COURT: Mr. Connell's witness.
2 MR. HESLEP: Right, one of us, principally him.
3 THE COURT: All right. You are so warned.
4 MR. DOMINGUEZ: Thank you, but I wasn't headed down
5 that path.
6 THE COURT: Okay.
7 MR. HESLEP: You can never tell.
8 THE COURT: Thank you everybody.
9 (Witness resumes the stand.)
10 (Open court.)
11 THE COURT: Thank you, ladies and gentlemen.
12 BY MR. DOMINGUEZ:
13 Q. When you were asked a series of questions earlier on in
14 your cross examination by Mr. Connell, do you recall that he
15 asked you a lot of questions about life as a prisoner at
16 Lorton?
17 A. Yes.
18 Q. When you entered into this decision, to plead guilty and
19 cooperate with the government, were you aware of the, aware of
20 consequences to you for cooperating?
21 A. The consequences of?
22 Q. I'll be more specific. Were you aware that your
23 decisions, decision to cooperate would have consequences in
24 your life?
25 A. Oh, yes, most definitely that.

1 Q. How would it change your life?
2 A. First of all, my friends don't want to be around me.
3 Second of all --
4 Q. Wait, first. Your friends don't want to be around you?
5 A. Yes.
6 Q. Okay, who were your friends prior to your decision to
7 plead guilty and cooperate?
8 A. Well, these just people I knew on the street.
9 Q. Who were those people on the street?
10 A. There's numerous peoples and some of them who I was in
11 this case with.
12 Q. Were they drug dealers? Yes, yes, people in this case?
13 A. Yes.
14 Q. With you, charged in this case?
15 A. Yes.
16 Q. Were a lot of your friends drug dealers?
17 A. Yes.
18 Q. Do those people want to be around you anymore?
19 A. Nope.
20 MR. HESLEP: Your Honor --
21 MR. CONNELL: The objection was I think we are past
22 preliminaries and this is pretty leading.
23 THE COURT: Be careful, Mr. Dominguez, not to lead
24 your witness.
25 BY MR. DOMINGUEZ:

1 Q. When you testified in a trial like this, is it public?
 2 A. To me it is.
 3 Q. Can anybody come in the courtroom?
 4 A. Yes.
 5 Q. And see the proceedings?
 6 A. Yes.
 7 Q. Can anybody come in and take a seat in the courtroom as
 8 long as they behave, and look at you when you testify on the
 9 witness stand?
 10 A. Yes.
 11 Q. Has that happened in this case?
 12 A. Yes.
 13 Q. Did somebody come in the courtroom yesterday?
 14 A. Yes.
 15 Q. Was that person a friend of yours?
 16 A. No, he wasn't.
 17 Q. If you were ever to get out of jail after having testified
 18 publicly in a trial such as this against other drug dealers,
 19 would you be able to sell drugs, PCP, cocaine or whatever to
 20 anybody in D.C.?
 21 MR. CONNELL: Objection, speculation, Your Honor.
 22 He's asking about the mythical future?
 23 THE COURT: Wait. Hold on.
 24 MR. DOMINGUEZ: He wants, you have to let the Judge
 25 rule on the objection first before answering.

1 serve a sentence of incarceration?
 2 A. I believe witness protection, I believe so, yes.
 3 Q. Is that one of the obligations that the government
 4 provides to you under this plea agreement to address the
 5 consequences of your decision to cooperate in a public forum
 6 like a trial?
 7 A. Yes.
 8 Q. In cross examination Mr. Connell asked you a question
 9 about I think when you first met Abdul Smith.
 10 Do you remember when that was?
 11 A. Yes, I believe it was in 2001.
 12 Q. When was it that you first started selling PCP that you
 13 got from Abdul Smith?
 14 A. That was in 2002.
 15 Q. But before that, before 2002 Abdul Smith and you had a
 16 relationship?
 17 MR. CONNELL: Objection, leading your.
 18 MR. DOMINGUEZ: I will rephrase it.
 19 THE COURT: Thank you.
 20 BY MR. DOMINGUEZ:
 21 Q. What was the nature of your relationship, if any, between
 22 you and Abdul Smith in 2001?
 23 A. First, we became friends. Then we became business
 24 partners.
 25 Q. Business of what?

1 THE WITNESS: I'm sorry.
 2 THE COURT: I think, I think the witness can answer
 3 this question. It's a culture question more than anything.
 4 MR. CONNELL: Then the objection is foundation.
 5 THE COURT: Oh, no, I think we have a foundation,
 6 thank you.
 7 You can ask the question again.
 8 The question was if you were ever to get out of jail
 9 after having testified publicly in a trial such as this against
 10 other drug dealers, would you be able to sell drugs, PCP,
 11 cocaine or whatever to anybody in D.C?
 12 THE WITNESS: Not at all.
 13 BY MR. DOMINGUEZ:
 14 Q. Whys?
 15 A. I'm a dead man.
 16 Q. If you were -- right now you're in a facility called CTF?
 17 A. Yes.
 18 Q. Could you ever be in a population of a jail?
 19 A. No.
 20 Q. Why?
 21 A. They'd kill me.
 22 Q. Why?
 23 A. Because I cooperated.
 24 Q. In your plea agreement is there a provision in your plea
 25 agreement to take care of you and provide safety for you if you

1 A. Cocaine. When we first started it was cocaine.
 2 Q. When you started selling PCP supplied to you by Abdul
 3 Smith between 2002 and your arrest date of 2004, did there come
 4 a point in time when you suspected that law enforcement people
 5 were on you?
 6 A. Yes.
 7 Q. What instances led you to believe that?
 8 A. I won't forget that day. It was 2003, October 1st. I was
 9 taking my kid to school and I noticed a car was following me
 10 with tint. And that's when I started realizing.
 11 Q. What did you understand to be additional risks involved --
 12 let me rephrase that.
 13 Were there any risks to you involved in being a drug dealer
 14 particularly one of your magnitude moving this kind of weight?
 15 A. Yes.
 16 Q. What?
 17 A. Me being killed, me being robbed or me being locked up.
 18 Q. Of those three risks which was the least important in
 19 significance to you?
 20 A. Me being robbed of least important.
 21 Q. Okay. What was the next most significant consequence as a
 22 risk?
 23 A. Me being locked up.
 24 Q. And what's the most significant consequence that you face
 25 as a drug dealer?

1 A. Me being killed.
 2 Q. When you were engaged in PCP drug dealing between 2002
 3 through your arrest date in March of 2004, were you aware that
 4 your phone was wiretapped at one period in time?
 5 A. I was figuring out, I pretty much had, I had a idea that
 6 it was tapped.
 7 Q. When did you have the idea that it was tapped?
 8 A. Like I said, after October 1st, '03 when the car was
 9 following me when I was taking my kids to school, that's when I
 10 started paying close attention to everything of my
 11 surroundings.
 12 Q. Did you keep talking on the phone?
 13 A. Yes, I did.
 14 Q. Did you change the phone?
 15 A. I changed a couple of phones, but I kept talking on the
 16 phone that was wiretapped. I kept talking on it.
 17 Q. In these phone calls without changing the phone did you
 18 have communications with other people that were drug associates
 19 with you and which you talked about your suspicions?
 20 MR. CONNELL: Objection, leading, Your Honor.
 21 BY MR. DOMINGUEZ:
 22 Q. What conversations did you have, if any, with any other
 23 drug associates about your suspicions that you were being
 24 investigated?
 25 A. Yes, I did talk to them about it.

1 questioning that demonstrates that even though he suspected
 2 that the law enforcement were onto him, he persisted in his
 3 activities and he made conversation in the wiretap against him.
 4 MR. CONNELL: That's not redirect.
 5 MR. DOMINGUEZ: Impeachment on his credibility.
 6 That's what we have already covered in, both in direct and
 7 redirect that he kept selling drugs between the time the phone
 8 call and March 16th on direct that he kept talking on the
 9 phone.
 10 MR. CONNELL: Those, the factors don't have nothing
 11 to do with rehabilitating his credibility.
 12 MR. DOMINGUEZ: They do. We believe because he is
 13 implying that the witness, the witness is willing to say
 14 anything or do anything to engender his gratitude of the
 15 government.
 16 THE COURT: Right.
 17 MR. DOMINGUEZ: And our position is that the
 18 conversations he made on the phone made at risk to himself not
 19 at a time when he was cooperating with the government.
 20 THE COURT: Oh, I think that's very clear. So why
 21 don't you just ask him that question.
 22 MR. DOMINGUEZ: Yes.
 23 THE COURT: I mean, you guys are all beating around
 24 the bush, so why don't you just ask him the question.
 25 MR. DOMINGUEZ: I'm going to ask him.

1 Q. What conversations is the question?
 2 A. Conversation me being followed by the police.
 3 Q. When you were having these conversations with Mr. Abdul
 4 Smith, about PCP, did you use the name or the words Magic
 5 Johnson?
 6 A. Yes.
 7 Q. Why?
 8 A. That was a code. That was a code name?
 9 MR. CONNELL: Your Honor, this is beyond.
 10 THE COURT: Yes, I'm not sure. The question was
 11 would you use a code.
 12 MR. DOMINGUEZ: Why were you using a code.
 13 THE COURT: And how is this redirect?
 14 MR. DOMINGUEZ: Defense counsel -- may we approach?
 15 THE COURT: Yes, why don't you come forward.
 16 I'm sorry, Mr. Martin.
 17 (Witness leaves the stand.)
 18 (Bench conference.)
 19 THE COURT: How is this redirect?
 20 MR. DOMINGUEZ: This defense counsel was careful in
 21 setting up a series of arguments for which he could argue that
 22 this witness would have fabricated or would have said anything
 23 to engender the gratitude of the government.
 24 THE COURT: Right, okay.
 25 MR. DOMINGUEZ: So I wish to pursue a line of

1 THE COURT: Ask him the question.
 2 MR. DOMINGUEZ: After I ask him the Magic Johnson
 3 question when I got the objection.
 4 THE COURT: Okay. Ask him that question.
 5 (Witness resumes the stand.)
 6 (Open court.)
 7 BY MR. DOMINGUEZ:
 8 Q. When you were talking on the telephone between 2002 and
 9 March of 2004 with Abdul Smith and with John Franklin and other
 10 criminal associates, had you entered into a plea agreement to
 11 cooperate with the government?
 12 A. No, I did not.
 13 Q. Did you have any incentive during those communications to
 14 say or do anything in those conversations to further your
 15 cooperation?
 16 A. No, I didn't.
 17 Q. Because it hadn't happened yet?
 18 A. Correct.
 19 Q. When you talked in code about Magic Johnson with Abdul
 20 Smith or with John Franklin, were you talking about buying
 21 Magic Johnson?
 22 A. No, I was talking about PCP.
 23 Q. I think I may have cut you off. I asked you a question
 24 about what are the consequences for you in your decision to
 25 plead guilty with cooperation, remember?

1 A. Yes.
 2 Q. I cut you off. Do you remember what those consequences
 3 were? Let me see if I did cut you off.
 4 Did you say, did you answer the question or did I cut you
 5 off?
 6 A. I believe you cut me off.
 7 Q. I'm sorry.
 8 What would be your, would you now finish the answer to that
 9 question. What are your personal consequences for the decision
 10 to plead guilty and cooperate?
 11 THE COURT: If we are going to continue, why don't we
 12 do this after lunch? Do you have much more to go?
 13 MR. DOMINGUEZ: Two questions.
 14 THE COURT: Let's finish this, and then we can
 15 release Mr. Martin.
 16 THE WITNESS: The consequences is pertaining on the
 17 street or in prison because I'm dealing with both consequences
 18 on the street death and penitentiary death.
 19 Q. No matter whether or not government files this departure
 20 motion or not, who is going to sentence you?
 21 A. The Judge.
 22 Q. Has the Judge made any promises to you about what the
 23 sentence will be?
 24 A. No, she have not.
 25 Q. Have we made any promises to you about what the sentence

1 will be?
 2 A. No, we have -- you have not.
 3 Q. We meaning the prosecutors?
 4 A. No.
 5 Q. Has your defense attorney made any promises to you about
 6 what the sentence is going to be?
 7 A. No.
 8 MR. DOMINGUEZ: Thank you. No further questions.
 9 THE COURT: All right. Thank you very much,
 10 Mr. Martin. You're excused.
 11 (Witness excused.)
 12 All right. Ladies and gentlemen, let's take a lunch
 13 break. Remember, mums the word. We're not going to talk about
 14 any of this over the lunch break because you don't have it all
 15 yet.
 16 We'll break until two. So if you could be back about
 17 quarter of so that we can get started on time, that would be
 18 wonderful. Thank you.
 19 (Jury excused at 12:30 p.m.)
 20 (Luncheon recess 12:30 p.m.)
 21 (Afternoon session reported by Annie Shaw.)
 22 -000-
 23
 24
 25

I-N-D-E-X			
	Direct	Cross	Redirect
1 On behalf of the Government:			
2 Herbert Martin			
3 By Mr. Connell		4	
4 By Mr. Dominguez			117
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14			
15 On behalf of the Defense:			
16 Defense Exhibit No. 2			70
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25			

1 CERTIFICATE
 2 I certify that the foregoing is a true and correct
 3 transcript, to the best of my ability, of the above pages, of
 4 the stenographic notes provided to me by the United States
 5 District Court, of the proceedings taken on the date and time
 6 previously stated in the above matter.
 7 I further certify that I am neither counsel for,
 8 related to, nor employed by any of the parties to the action in
 9 which this hearing was taken, and further that I am not
 10 financially nor otherwise interested in the outcome of the
 11 action.

Crystal M. Pilgrim, RPR

Date