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CAUSE NO. D-1-GV-04-001288

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STATE OF TEXAS,) IN THE DISTRICT COURT
ex rel.)
ALLEN JONES,)
Plaintiffs,)

VS.)

JANSSEN, LP, JANSSEN)
PHARMACEUTICA, INC.,) TRAVIS COUNTY, TEXAS
ORTHO-McNEIL)
PHARMACEUTICAL, INC.,)
McNEIL CONSUMER &)
SPECIALTY)
PHARMACEUTICALS, JANSSEN)
ORTHO, LLC, and)
JOHNSON & JOHNSON, INC.,)

Defendants.) 250TH JUDICIAL DISTRICT

JURY TRIAL

On the 12th day of January, 2012, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable John K. Dietz,
Judge presiding, held in Austin, Travis County, Texas:

Proceedings reported by machine shorthand.

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I N D E X

DAILY COPY VOLUME 4

JANUARY 12, 2012

PLAINTIFFS' WITNESSES

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1 Bursch-Smith as an adverse witness.

2 (Video played as follows:)

3 **NANCY BURSCH-SMITH**

4 having been first duly sworn, testified as follows by
5 videotaped deposition:

6 **DIRECT EXAMINATION**

7 Q. Tell us your name.

8 A. Nancy Bursch-Smith.

9 Q. It's your testimony that Dr. Shon was your
10 principal contact at TDH -- TDMHMR?

11 A. Correct.

12 Q. Janssen is responsible for putting Dr. Shon on
13 the map, so to speak; isn't that right?

14 A. I think that that's a rather sweeping
15 statement. I think that there are many companies that
16 probably were involved with Dr. Shon. I wouldn't say
17 that Janssen held that title.

18 Q. All right. Would it surprise you that that's
19 what Janssen says in its own documents, that they put
20 him on the map?

21 A. I don't know.

22 Q. Okay. Do you disagree that you and others at
23 Janssen put Dr. Shon on the map?

24 A. I take issue with this putting somebody on the
25 map. I don't know really what that means. If it means

1 making Dr. Shon known to a lot of folks within the
2 company or -- yeah, but I'm -- I guess I don't really
3 understand the "on the map." When requested, we at
4 times would fund Dr. Shon to share his -- his novel
5 concept of TMAP with other states.

6 Q. And you say his novel concept?

7 A. I see him as the -- the conductor or creator,
8 main developer of TMAP.

9 Q. Was it part of your team's goal or message in
10 1996 that Risperdal was superior to conventional
11 antipsychotics?

12 A. According to what we were -- our policies were
13 and our messaging and, you know, everything, that that
14 was not something that we said.

15 Q. Okay. So it was -- it was -- let me make sure
16 I understand that. It was -- according to your policies
17 and your messaging, it was not something that Janssen
18 would say, that Risperdal was superior to the older
19 antipsychotics?

20 A. Right.

21 Q. Is that your testimony?

22 A. Right.

23 Q. What do you base that understanding on?

24 A. It was very clear to us at the time that that
25 was not a correct statement.

1 Q. And I take it that never during your employment
2 at Janssen has anyone from Janssen ever told you that it
3 was appropriate or acceptable to describe Risperdal as
4 being superior to -- in efficacy to older
5 antipsychotics?

6 A. Not that I can recall.

7 Q. All right. So it's -- you knew it back in
8 '99 -- '96, '97, '98, '99, all throughout your entire
9 career up till the present, right?

10 A. I believe so.

11 Q. But have you ever seen the attached slide show
12 which is entitled "Essential Medicaid Access"?

13 A. It doesn't look familiar to me.

14 Q. It doesn't look familiar to you?

15 A. No.

16 Q. And if you just look at Page 3, the third page
17 there --

18 A. Uh-huh.

19 Q. -- under Risperdal effectiveness --

20 A. Uh-huh.

21 Q. -- it says: "Risperdal is superior to
22 haloperidol in managing positive and negative" systems
23 [sic] "dosing and titration flexibility." Do you see
24 that?

25 A. Uh-huh.

1 Q. Your understanding is that Janssen is not
2 allowed to say that, right?

3 A. To -- to our customers?

4 Q. Correct.

5 A. This appears to be an internal document, and
6 there may be some more information around this that I'm
7 not aware of.

8 Q. At -- based on your understanding of the rules
9 that you lived by --

10 A. Uh-huh.

11 Q. -- at Janssen, is that something Janssen was
12 permitted to say to customers?

13 A. No.

14 Q. Do you know why?

15 A. Because we were told not to.

16 Q. So let's get our time frame straight. So this
17 is late 1997?

18 A. Uh-huh.

19 Q. Is that fair?

20 A. Yeah.

21 Q. What do you recall your initial support being?

22 A. My recollection was that Dr. Rush said that he
23 was approaching every company I believe for the amount
24 of 75,000.

25 Q. Well, you knew from Janssen's perspective that

1 what Janssen was hoping to get from the support of TMAP
2 was favorable Risperdal positioning within the TMAP
3 algorithm; isn't that right?

4 A. I think ultimately we supported TMAP because we
5 totally believed in what TMAP stood for. Where -- when
6 we agreed to the \$75,000, we had no idea where Risperdal
7 or any of the atypicals would end up on the algorithm.
8 But, again, it would only be natural -- I work for a
9 for-profit company, that it would be natural that if we
10 had favorable positioning, it would ultimately help
11 sales. But that was not our primary objective in
12 looking at TMAP.

13 Q. Are you telling the jury that it was not
14 Janssen's goal that by supporting TMAP, whether it be
15 with the \$75,000 or with any other funding that Janssen
16 provided, that the goal was not to obtain favorable
17 Risperdal positioning within the TMAP algorithm?

18 A. That was not our primary objective.

19 Q. Okay. Was it an objective?

20 A. I don't know if it was a spoken objective or if
21 it was a documented objective, but I think it's implied
22 just the fact that we're industry.

23 Q. Well, let's take a look at Exhibit 1164. This
24 is a couple years down the line and a check dated
25 February 2001 for \$7,000 to the Texas Department of

1 Mental Health and Mental Retardation. Do you see that?

2 A. Okay. I see it.

3 Q. And do you see there that it's got your
4 authorization for the money, right?

5 A. Right.

6 Q. There is a box for reason for support, and it
7 says "Support for TDMHMR Annual Physician's Conference."
8 Do you see that?

9 A. Uh-huh.

10 Q. And what's the deliverable?

11 A. The deliverable says "Favorable Risperdal
12 positioning within TMAP algorithm."

13 Q. And it was important that Janssen have a good
14 relationship with Dr. Shon from the standpoint of
15 Janssen's Risperdal business, true?

16 A. It was true, but it was unrelated to high
17 maintenance.

18 Q. Okay. So on the one hand he's high
19 maintenance, right? Right?

20 A. In a certain way, yes.

21 Q. But -- and then separately you're agreeing with
22 me that a good relationship with him was important to
23 Janssen's Risperdal business?

24 A. To Janssen's relationship with the TDMHMR. I
25 mean, and ultimately, yes, I represent -- I represent

1 Risperdal and, again, I do work for a for-profit
2 company, so it would make sense that they be related.

3 Q. All right. Well, let me hand you what we'll
4 mark as 1799, which is a -- okay. So this is a series
5 of e-mails starting at the bottom of the last page dated
6 March 20th, 2001 from Ms. Snyder to Rob Kraner copying
7 you, correct?

8 A. Appears that way, yes.

9 Q. Okay. And the first line says, "Rob, As you
10 know, Steve has been spending quite a bit of time in
11 Pennsylvania on TMAP. The following are some key points
12 that I have gathered from his presentation and
13 one-on-one dialogue. I admit, Steve's new relationships
14 with the competition are not surprising. However, since
15 Steve has influence in many states, it may be worthwhile
16 to devise a strategy to counter some of the
17 competition." Do you see that?

18 A. Yes.

19 Q. What did you understand that to mean?

20 A. I don't remember.

21 Q. Why don't you tell the jury, just on the bottom
22 of that 1799, read for me, if you would, the e-mail that
23 starts out "Laurie, thanks for capturing this for Rob
24 and Nancy."

25 A. "Laurie, thanks for capturing this for Rob and

1 Nancy. Laurie and" -- "Laurie and spoke about this at
2 length in Alexandria. Steve I suppose is enjoying the
3 vast attention and response he can command from
4 industry. Laurie shared that Lilly is sending their
5 corporate jet to pick up Steve and bring him to Lilly
6 for a site visit. Obviously Steve has the right to be
7 served by all industry. Let's hope he remains fair
8 balanced and remembers who placed him on the map."

9 Q. Placed -- placed him on the, quote, "map"
10 map --

11 A. Yes.

12 Q. -- right?

13 A. That -- yeah, that's what she said.

14 Q. It wouldn't make sense to try to sell Dr. Shon
15 on certain benefits of Risperdal? That wouldn't make
16 sense?

17 A. There -- the only time that we'd get involved
18 in a discussion with Dr. Shon is if he had specific
19 questions, perhaps about pricing of Risperdal versus our
20 competition or something like that, but we would be
21 responding to his questions. It's not something we
22 would proactively go in and -- I just can't imagine why
23 that would happen.

24 Q. So you wouldn't want to sell your benefits to
25 Dr. Shon?

1 A. No.

2 Q. Well, let's look again at 1799.

3 A. Okay.

4 Q. Okay? Let's look at the last page of the
5 e-mail. Now, tell the jury what this e-mail -- the
6 subject matter of this e-mail is. What's the -- the
7 identified the subject matter?

8 A. "Steve Shon update."

9 Q. And the -- it's a Steve Shon update. What's
10 the very last subject of this e-mail?

11 A. "Possible strategies."

12 Q. Tell the jury -- read to the jury what those
13 strategies are as identified by Ms. Snyder and
14 communicated to you in March of 2001.

15 A. "Sell our benefits, particularly efficacy and
16 safety profile. To increase our attention and bring
17 Steve into an HOV. More frequent CNS sales calls."

18 Q. Now, ma'am, I'm not an expert in your business,
19 but that e-mail says that a possible strategy identified
20 by Ms. Snyder is to, quote, sell our benefits, does it
21 not? Isn't that what it says?

22 A. It does, but I don't agree with it.

23 Q. So let's go back to the first page of the
24 e-mail, 1799. Can we do that?

25 A. Uh-huh.

1 Q. So when you say "Fantastic," double exclamation
2 point, "Let's do it," is that your way of giving an
3 implied criticism to the possible strategy?

4 A. No.

5 Q. 1802. So this is an e-mail string that you --
6 the subject matter of which is following up from the
7 TMAP advisory board meeting, right?

8 A. Uh-huh.

9 Q. You met with Dr. Shon, then you summarized
10 the -- what he told you to some degree, right?

11 A. Right. It looks like these were -- I had some
12 basic questions and I summarized what he said.

13 Q. Well, he says -- or you say that he says, "Felt
14 the meeting should have been more strategically based
15 (i.e.: Janssen states what it wants, when it wants it
16 and why CONSTA should be positioned in a certain way)";
17 is that correct?

18 A. That's what -- that's what he said.

19 Q. Now, these advisory boards are not supposed to
20 be what Janssen wants, are they?

21 A. Exactly.

22 Q. Okay. So did you find it peculiar that he was
23 telling you how Janssen strategy could be better
24 implemented at -- in this setting?

25 A. I thought it was very dif -- very odd.

1 Q. Now, can you point out to the jury in the
2 e-mail that you're sending here to all these different
3 people where you say it's odd? Where do you
4 characterize it anywhere in here as odd, peculiar or
5 unusual in any way?

6 A. I was not making any judgments on what Dr. Shon
7 was saying. I was simply reporting exactly what
8 Dr. Shon told me.

9 Q. Now, there came a time when you became aware of
10 a Janssen policy that required supervisor approval
11 before paying anyone like Dr. Shon honoraria or anything
12 else, right?

13 A. Uh-huh. It was -- yeah.

14 Q. And do you remember when you first became aware
15 of -- of the need to get approval from Dr. Shon's
16 supervisor before he could receive any payments from
17 Janssen?

18 A. I don't remember exactly when.

19 Q. Okay.

20 A. But it came down and it was very clear that we
21 had to have that approval.

22 Q. And this was produced to us. Attached to it is
23 what we've labeled 441, which is this "Janssen
24 Pharmaceutica Gratuities to Government Employees
25 Assessment Health Care Compliance." Do you recall

1 getting this assessment in or around February of 2003?

2 A. I don't recall it specifically.

3 Q. And it says, "It appears that payments were
4 made to and expense reports included expenses ... for
5 government employees without the appropriate government
6 supervisor approval. Many of these payments were made
7 through third-party vendors with the exception of costs
8 through Janssen employee expense reports."

9 Then it says, "Appropriate disclosure of
10 government supervisor approval for remuneration" is
11 expenses -- "/expenses is required per the Health Care
12 Compliance Guide and helps to safeguard the company and
13 its employees against exposure or litigation." Do you
14 see that?

15 A. Uh-huh.

16 Q. But in any event, you -- you certainly knew as
17 of 2003 that Janssen had a requirement that you get
18 written -- that you get approval from government
19 employee supervisors?

20 A. For?

21 Q. For them participating in speaking programs,
22 getting reimbursement, getting honoraria, things of that
23 nature.

24 A. Yes.

25 Q. Okay. So let me show you Exhibit 159. It's a

1 series of e-mails about six months later regarding --
2 starting at the bottom there regarding speaker
3 agreements. Do you see that?

4 A. Yes.

5 Q. And it's an e-mail from Ms. -- Ms. Neff to you.

6 A. Right.

7 Q. Who is Ms. Neff?

8 A. She was my administrative assistant.

9 Q. And she says to you, "Nancy - an update on
10 Speaker Agreements." This is June 10th, 2003. "Speaker
11 Agreements, together with a cover letter, Fee for"
12 Services "and Expense Form and a self-addressed postage
13 paid return envelope was included." And then it lists
14 all the people that agreements were sent to. Do you see
15 that?

16 A. Yes.

17 Q. Dr. Chiles, Dr. Conley, Dr. Crismon, a number
18 of people, and Dr. Shon. Do you see that?

19 A. Uh-huh. Uh-huh. People from many states, yes.

20 Q. Right. And Dr. Shon from Texas?

21 A. Yes.

22 Q. And did you ever get an agree -- a signed
23 agreement back from Dr. Shon?

24 A. I don't know. I don't recall.

25 Q. And is it your testimony that you don't know

1 that that was ever done?

2 A. I don't recall.

3 Q. Are you aware that the company has told us in
4 this case that they don't have any record of having
5 received a -- a signed form from Dr. Shon?

6 A. No, I'm not aware of that.

7 Q. Ms. Bursch-Smith, I've handed you an exhibit
8 which is 1809. In your e-mail you say: "Rob, thanks
9 for your reply. There is a sense of urgency on getting
10 this information to the TMAP investigators as TMAP has
11 an incredible influence on many atypical treatment
12 algorithms nationally." And that's what you said
13 about -- that's what you said in that e-mail of
14 November 13th, '03, correct?

15 A. That's correct.

16 Q. And that's a true statement that TMAP had an
17 incredible influence nationally on atypical treatment
18 guidelines?

19 A. On many of them, yes.

20 Q. And then you say: "The sooner we get Risperdal
21 CONSTA in a favorable position in the TMAP algorithm,
22 the sooner other algorithms will include it." Is that
23 what you said?

24 A. That's what I'm saying.

25 Q. And you said that because placing Risperdal

1 CONSTA in a favorable position was a positive thing for
2 Janssen?

3 A. Yes.

4 Q. Did you ever, during your tenure at PHS&R,
5 disclose to any Texas decision-maker information
6 regarding Janssen or J&J's financial support of TMAP?

7 A. Not to my knowledge.

8 Q. Okay. Did you ever disclose to any Texas
9 decision-makers information regarding Robert Wood
10 Johnson Foundation's financial support of TMAP?

11 A. Not to my knowledge.

12 Q. And did you ever disclose to any Texas
13 decision-makers information regarding Janssen or J&J's
14 financial support of the Tri-University Guidelines, if
15 any?

16 A. I don't recall.

17 Q. Did you ever disclose to any Texas
18 decision-makers that Janssen paid Shon to visit other
19 states regarding the issue of TMAP?

20 A. I don't recall if and when that would have come
21 up.

22 Q. Okay.

23 A. I don't remember.

24 Q. Did you ever disclose to Texas decision-makers
25 any payments that were made to Steve Shon through a

1 third-party vendor to provide presentations regarding
2 TMAP in other states?

3 A. I don't recall.

4 Q. Did you ever disclose to any Texas
5 decision-makers that -- that Shon was a member of any
6 Janssen-sponsored advisory boards?

7 A. I can't recall.

8 Q. Well, there were payments made to -- Janssen
9 funded some presentations that Lynn Crismon made in
10 other states; is that a true statement?

11 A. That's a true statement.

12 Q. Okay. Did you ever disclose this fact to Texas
13 decision-makers during your tenure?

14 A. Such as we were talking about, P&T, the DUR?

15 Q. That's right. Still with that definition.

16 A. Not that I recall.

17 Q. Did you ever disclose to Texas decision-makers
18 that Lynn Crismon had received research grants from
19 Janssen?

20 A. No.

21 Q. Did you ever disclose to Texas decision-makers
22 that Crismon served on a Janssen-sponsored ad board?

23 A. I don't recall.

24 Q. Okay. Did you ever disclose to Texas
25 decision-makers that Janssen funded studies conducted by

1 Alex Miller?

2 A. Not that I recall.

3 Q. Did you ever inform Texas decision-makers that
4 Alex Miller was a paid speaker for Janssen?

5 A. Not that I recall.

6 Q. With respect to John Chiles, did you ever
7 disclose information to the Texas decision-makers
8 regarding the amount of money that Janssen paid to John
9 Chiles?

10 A. Not that I would be aware of.

11 Q. Did you ever disclose that -- to Texas
12 decision-makers that Janssen paid Chiles to speak
13 regarding the issue of either TMAP or UMAP in other
14 states?

15 A. Did I discuss it with other --

16 Q. Other Texas --

17 A. -- decision-makers?

18 Q. Did you -- did you disclose it to Texas
19 decision-makers, yeah.

20 A. Not that I'm aware of.

21 Q. Did you ever disclose to Texas decision-makers
22 information regarding the incidence of adverse effects
23 of the drug Risperdal?

24 A. Not that I can recall.

25 Q. Let me ask you this: With respect to payments

1 that were made to Lynn Crismon for presentations in
2 other states, did you inform the TMAP decision-makers
3 that you're aware of that he had received payments from
4 Janssen for those presentations?

5 A. I don't recall having those discussions.

6 Q. Okay. Did you disclose to other TMAP
7 decision-makers that you were aware of that John Chiles
8 was receiving payments for presentations regarding TMAP
9 in other states?

10 A. Again, nothing that I would be aware of.

11 Q. Did you disclose to other TMAP decision-makers
12 that you're aware of the financial relationship between
13 Janssen and Shon?

14 A. No. No.

15 Q. Did you disclose to other TMAP key
16 decision-makers that you were aware of any financial
17 relationship that existed between Alex Miller and
18 Janssen?

19 A. No.

20 *(Video stopped)*

21 MR. MELSHEIMER: That concludes the
22 plaintiffs' offer of Nancy Bursch-Smith's testimony,
23 Your Honor.

24 MR. McCONNICO: Your Honor, the defendants
25 will offer their part of the testimony.

1 *(Video played as follows:)*

2 **CROSS-EXAMINATION**

3 Q. What is the reimbursement manager?

4 A. Reimbursement manager would focus on payers as
5 well as access for -- the department I worked for was
6 solely in mental health at that time.

7 Q. Were -- were you trying to position your
8 products like Risperdal in a way that they would get
9 maximum allowable reimbursement?

10 A. I think -- no, not at that stage. I mean, I
11 think really pretty much it was just to understand
12 that -- for the sales force to under -- understand who's
13 paying for it and who --

14 Q. But --

15 A. -- wasn't paying for it.

16 Q. Let me ask you this: Is there anything
17 wrong -- let's -- let's -- let's -- let's say that
18 Janssen was selling the TMAP concept through Dr. Shon.
19 Anything wrong with that?

20 A. Again, I have trouble with -- with your
21 terminology of selling. To me it was an -- an exchange
22 of information on a very novel concept at the time in
23 mental health.

24 Q. And --

25 A. And so --

1 Q. I'm sorry. Go ahead.

2 A. And so it was important that if a state was
3 interested in what Texas was doing with TMAP, that that
4 information, if requested by a customer, was shared.

5 Q. Why was Janssen interested in providing
6 financial support to TMAP?

7 A. We were approached by John Rush who explained
8 the concept of TMAP, what they were trying to do, what
9 the objective was and where they hoped to take the
10 project, and they explained to us they were reaching out
11 to manufacturers of mental health drugs and asking for
12 an equal contribution from each company because they did
13 not want any one company giving more than another from
14 an optics perspective, they wanted to -- they felt that
15 was the -- the right way to do it. And so after
16 listening to what Dr. Rush said, myself and my
17 colleagues decided it was something that we should talk
18 about further and possibly support.

19 Q. Do you disagree that Janssen placed Dr. Shon on
20 the map?

21 A. Yes. I feel that there was -- there were so
22 many companies -- like I said, we were just one of many
23 that supported TMAP from the beginning. And I know that
24 Dr. Shon spoke for all of the companies around the
25 country, not just for Janssen. So for us to make that

1 claim, to me, I didn't -- I don't think is -- is -- is a
2 fair claim.

3 Q. So was there ever an effort made to put
4 Risperdal down -- below Stage 1?

5 A. We had absolutely no input into TMAP and where
6 these positionings were.

7 Q. Well, you just made a statement that you --
8 that Janssen had no input in -- in the creation of the
9 TMAP schizophrenia algorithm. That's what you said,
10 right?

11 A. Janssen did not have any input as to how the
12 algorithm was going to appear, what the end product was
13 going to look like.

14 Q. ... reimbursement of Janssen, was attempting to
15 have Risperdal CONSTA added as a Stage 1 treatment on
16 the TMAP schizophrenia algorithm, right?

17 A. We had absolute -- absolutely -- Reimbursement
18 had no influence at all on any decisions TMAP made as
19 far as where any drug would be placed on the algorithm.

20 Q. Do you believe that you influenced Dr. Shon's
21 work at TDMHMR?

22 A. Absolutely not.

23 Q. Why don't you believe that you influenced
24 Dr. Shon's work on TMAP?

25 A. Because Dr. Shon, Dr. Rush, all of the TMAP

1 core team members all told us that it was hands off for
2 all pharmaceutical companies, that they would be making
3 their own decisions and that's -- that was -- that
4 was -- they were the rules.

5 Q. Why don't you believe that you influenced
6 Dr. Shon's work at TDMHMR?

7 A. Why don't I feel?

8 Q. Yes.

9 A. I don't think he wanted it, for one thing, or
10 sought it or needed it or desired it.

11 Q. Do you believe that you had any influence on
12 TMAP?

13 A. No.

14 Q. Why not?

15 A. Because, again, it was made very clear to us
16 that any decisions as far as placement on any of the
17 algorithms would be made through their expert consensus
18 groups.

19 Q. Do you believe that you or Janssen -- well, let
20 me back up. Do you believe that Janssen had any
21 influence on TMAP?

22 A. No.

23 Q. Why not?

24 A. For the same reason.

25 Q. All right. Do you believe that you or Janssen

1 had any influence on the schizophrenia algorithm in
2 TMAP?

3 A. No.

4 Q. Why not?

5 A. Because we were not part of the expert
6 consensus group that developed TMAP algorithms.

7 Q. Do you believe that you've influenced the goals
8 and policies of advocacy groups in the state of Texas?

9 A. No.

10 Q. Why not?

11 A. Because I just don't think that that's -- that
12 was a possible thing to do.

13 Q. Have you utilized advocacy groups to influence
14 Texas Medicaid?

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

16 Q. Have you utilized advocacy groups to influence
17 TDMHMR?

18 A. No.

19 Q. Ms. Smith, did you have any contact with any
20 members of the P&T committee?

21 A. No.

22 Q. Did you have any contact with any members of
23 the DUR committee?

24 A. No.

25 Q. You never made a presentation to the P&T

1 committee?

2 A. No.

3 Q. Never made a presentation to the DUR committee?

4 A. No.

5 *(Video stopped)*

6 MR. McCONNICO: Your Honor, that is the
7 end of the defendants' presentation of this deposition.

8 MR. SWEETEN: Your Honor, we have a short
9 internal e-mail to read to the jury.

10 MR. McCONNICO: Do you have an exhibit
11 number?

12 MR. SWEETEN: Yes. It's PX 77.

13 MR. McCONNICO: Do you have a copy?

14 MR. SWEETEN: Yes, sure.

15 Okay. This is Plaintiffs' Exhibit 77, an
16 internal Janssen e-mail, starting at the bottom e-mail.
17 There are three sections to the e-mail. This is from
18 Yolanda Roman, Janssen U.S., sent Tuesday, March 27th,
19 2001 to Ludwig Hantson, Janssen U.S., Janet Vergis,
20 Janssen U.S., Nancy Bursch-Smith, Janssen U.S., Rob
21 Kraner, Janssen U.S. and Sid Frank, Janssen U.S.

22 "Subject: Steve Shon." "Importance:
23 High." "Request: Special Janssen management visit with
24 Steve Shon, M.D., Medical Director, Texas Department of
25 Mental Health Mental Retardation.

1 "Ludwig and Janet, Dr. Shon is the Texas
2 State Medical Director responsible for all Texas
3 institutional business, as well as the main driver" of
4 influence "over the state-apportioned" \$50 million "for
5 atypical antipsychotics. He is also the author of the
6 Texas-based policy rendering costs a deciding factor
7 when selecting an atypical -- all things being equal
8 clinically. Finally, Dr. Shon, primary author and
9 facilitator of the Texas Medication Algorithm Project
10 (TMAP; also a session at APA) is partnering with Janssen
11 and other major state agencies (e.g., PA, FL, OH...) in
12 facilitating the adoption of TMAP.

13 "As you can imagine, Lilly and Pfizer are
14 not happy with Dr. Shon's influence over prescribing
15 behaviors that favor Risperdal. Both companies have
16 developed a full-court press to attempt and sway
17 Dr. Shon towards olanzapine and ziprasidone, and away
18 from Janssen. Note: Dr. Shon can and is influencing
19 not only the" 50-million-dollar "atypical dollars in
20 Texas, but likewise in many other states. We will not
21 let Lilly or Pfizer prevail with our most important
22 public sector thought leader."

23 Response e-mail above from Ludwig Hantson,
24 Janssen U.S., Tuesday, March 27, 2001 to Yolanda Roman,
25 Janssen U.S., Janet Vergis, Janssen U.S., Nancy

1 Bursch-Smith, Janssen U.S., Rob Kraner, Sid Frank of
2 Janssen U.S. Subject: Regarding Steve Shon, M.D.

3 "Yolanda, it would be a great idea to meet
4 with Dr. Shon at the APA. Please move on with planning
5 the meeting. You may want to schedule the meeting for
6 Saturday or Sunday, as we will be leaving for the AAN on
7 Monday (or maybe Tuesday). Best regards, Ludwig."

8 The final section of the e-mail chain is
9 from J. Vergis to Ludwig Hantson, Janssen U.S. and
10 others, cc: Nancy Bursch-Smith, Janssen U.S., Rob
11 Kraner, Janssen U.S.

12 "Thanks Yolanda. I would be pleased to
13 meet with him. I will be leaving the APA on Monday
14 afternoon for the AAN as well. Janet."

15 MR. MELSHEIMER: May it please the Court,
16 at this time the plaintiffs would call as an adverse
17 witness Bill Struyk, Janssen.

18 *(Video played as follows:)*

19 **BILL STRUYK,**
20 having been first duly sworn, testified as follows by
21 videotaped deposition:

22 **DIRECT EXAMINATION**

23 Q. Would you state your name, please, sir?

24 A. Bill Struyk.

25 Q. Where do you work?

1 A. It's Johnson & Johnson Services, Inc.

2 Q. What job do you have with that company?

3 A. I'm a region director in the State Government
4 Affairs --

5 Q. For how long have you held the job you've got
6 now?

7 A. As a region director?

8 Q. Yes, sir.

9 A. I'm going to say approximately seven years.

10 Q. All right. We're in March of 2009, so that
11 would take us back roughly to 2002?

12 A. Somewhere in that area.

13 Q. All right. But you were in reimbursement for
14 two years?

15 A. Yes, sir.

16 Q. '96 and '97; is that right?

17 A. Yes, sir.

18 Q. Did you have things to do with the State of
19 Texas in both '96 and '97?

20 A. Yes, more in a supervisory capacity in '97. I
21 had direct responsibility in '96.

22 Q. Okay. When you joined the reimbursement
23 group -- is that what it was called?

24 A. Yes, sir.

25 Q. Did it later come to be called something

1 different?

2 A. After my departure, PHS&R.

3 Q. So would it be fair to say that you were among
4 those who was in on the ground floor in the early days
5 of the reimbursement team?

6 A. Yes.

7 Q. What -- well, when you came to the
8 reimbursement group, what product or products did you
9 understand you'd be dealing with?

10 A. Risperdal was our primary focus.

11 Q. What's the first activity you can recall having
12 engaged in that had anything to do with the State of
13 Texas?

14 A. In 1995 -- '96 -- I made a trip in early '96
15 with Jack Vaughan and met with several people.

16 Q. What people did you meet with on this trip in
17 early 1996 with Mr. Vaughan?

18 A. The one that I can remember meeting with -- and
19 there were several, and I --

20 Q. Sure.

21 A. But the one that clearly sticks out in my mind
22 is Dr. Steve Shon.

23 Q. All right. And who you understand Dr. Steve
24 Shon to be at the time?

25 A. I believe he was the medical director of

1 TDMHMR.

2 Q. Now, let's talk about the symposium in Austin
3 in 1996. What was that about?

4 A. It was the first public discussion of the --
5 what came to be known as the Tri-University Guidelines.

6 Q. Did anyone else from Janssen or Johnson &
7 Johnson attend?

8 A. I think John Lloyd did.

9 Q. About when in 1996 did this symposium occur?

10 A. I will say between May or June, somewhere in
11 that time frame.

12 Q. So you've told me that in early 1996 you came
13 to Texas with Mr. Vaughan and you met with Dr. Shon in
14 Austin and with the medical director for the Tarrant
15 County community mental health centers. And then you
16 have told me that in May or June you came back to Texas
17 to attend this symposium.

18 A. Uh-huh.

19 Q. Am I with you so far in terms of --

20 A. Yeah. There was a --

21 Q. -- your Texas activities?

22 A. There was -- well, there was a trip in between
23 there. It was between January and this symposium. And
24 the person I most prominently remember and remember
25 meeting at all was Dr. John Rush.

1 Q. Tell me how you came to meet Dr. Rush.

2 A. We met in his offices at UT Southwest.

3 Q. Here in Dallas?

4 A. Yes, sir.

5 Q. Who else was there?

6 A. Another gentleman from Janssen, Gary -- and

7 I -- I apologize. I don't remember Gary's name.

8 Q. Gary Leech?

9 A. Leech. Thank you.

10 Q. And so you met with Dr. Rush?

11 A. Yes, sir.

12 Q. Tell me what was said at that meeting.

13 A. It was at that time that I became aware of the
14 Tri-University Guidelines, and an opportunity to have
15 them presented in Texas was discussed.

16 Q. So we've got you in the state of Texas to meet
17 with Dr. Shon and the Tarrant County medical director in
18 the early part of the year, coming back in March to meet
19 with Dr. John Rush and coming back in May or June to
20 attend this symposium in which Dr. Miller, and
21 presumably others, made presentations about the
22 Tri-University Guidelines. Are we up to date so far?

23 A. Yeah, as best as I can remember.

24 Q. Mr. Struyk, the court reporter has handed you
25 what's been marked as Exhibit 1187. To identify it for

1 the record, it is an e-mail or a memorandum that says
2 it's from Y. Wallace and W. Struyk; is that right?

3 A. Yes.

4 Q. And it's addressed to the Reimbursement Team;
5 is that correct?

6 A. Yes.

7 Q. Dated December 20, 1996?

8 A. Yes, sir.

9 Q. Did you understand in late 1996, at the time of
10 this training program, that one of the purposes, one of
11 the missions, if you will, of the reimbursement
12 department was to protect existing Risperdal business?

13 A. The results, that we would protect existing
14 Risperdal business, is communicated in -- in an internal
15 document as something that our efforts should result in,
16 yes.

17 Q. Do you understand likewise that another of your
18 missions in the reimbursement department was to ensure
19 that no Risperdal business is lost by being caught off
20 guard by competitive, legislative or regulatory
21 initiatives?

22 A. Yes.

23 Q. Let me read some of this into the record, and
24 then I need to ask you some questions about it. Under
25 the heading "Tri-University Guidelines" the following

1 appears: We discussed in depth the Tri-University
2 Guidelines and how we, as a department, can leverage the
3 Expert Consensus Opinion to increase Risperdal sales by
4 making atypical antipsychotics more widely available.
5 Yolanda and I were able to give several examples of how
6 programs that we have -- of -- of -- of how programs
7 that we have held that have had favor -- favorable
8 impact on the reimbursement environment in different
9 states. We decided that a key would be presenting these
10 guidelines as, quote, arm's length, closed quote, i.e.,
11 making sure that our customers realize that the
12 protocols are not Janssen influenced but rather Janssen
13 supported. Now, did I read that right?

14 A. Yes, sir.

15 Q. All right. Now, when I read the phrase
16 "Yolanda and I," that suggests to me that you're the one
17 writing these words. Is that what it suggests to you?

18 A. Yes.

19 Q. It is the case that at this training program
20 for your new reimbursement managers in December of 1996,
21 you and Ms. Yolanda Wallace Roman discussed in depth the
22 Tri-University Guidelines?

23 A. Yes.

24 Q. And is it your belief that among the things
25 that you and Ms. Wallace Roman discussed specifically

1 about those guidelines was how the reimbursement
2 department could leverage the expert consensus opinion
3 to increase Risperdal sales by making atypical
4 antipsychotics more widely available?

5 A. Yes.

6 Q. All right. Now, what do you understand when
7 you -- when you wrote that your department could
8 leverage the expert consensus opinion to increase
9 Risperdal sales, what did you understand the expert
10 consensus opinion to refer to?

11 A. Tri-University Guidelines.

12 Q. As you wrote the words, apparently you thought
13 the Tri-University Guidelines also had a role in
14 leveraging the expert consensus opinion to increase
15 Risperdal sales, true?

16 A. When I wrote this, yes.

17 Q. As you read now what was written back in
18 December 1996, why would it be a key to present the
19 guidelines as being at arm's length? Why would that be
20 important?

21 A. I think for credibility and -- for credibility
22 purposes.

23 Q. This is a document that's already been marked
24 as an exhibit, and specifically as Exhibit No. 280,
25 during the deposition of Ms. Evelyn Grasso-Sirface. And

1 at the top of that page, do you see a heading
2 Reimbursement 1996, Team Projects & Accomplishments"?

3 A. Yes, sir.

4 Q. Next bullet point is "Tri-University
5 Schizophrenia Treatment Guidelines." Did I read that
6 right?

7 A. Yes, sir.

8 Q. All right. And here the accomplishment is said
9 to be design, development and implementation. Did I
10 read that correct?

11 A. Yes, sir.

12 Q. If you'll turn to the next page ending in 035,
13 that page has your name at the top; is that right?

14 A. Yes, sir.

15 Q. I assume -- and tell me if this would be a
16 wrong assumption -- that you would not knowingly have
17 allowed someone to list, under your name, projects and
18 accomplishments that in fact you had nothing to do with?

19 A. That's -- I -- that's accurate.

20 Q. Let me ask you to go to the next page ending in
21 036. Are you with me?

22 A. Yes, sir.

23 Q. Below your name, the heading says Reimbursement
24 Projects & Accomplishments (Continued)?

25 A. Yes, sir.

1 Q. Bullet point says Texas Preferred Practices,
2 and that's in quotation marks --

3 A. Uh-huh.

4 Q. -- for Mental Health Care Reform Symposia. Did
5 I read that heading correctly?

6 A. Yes, sir.

7 Q. And below that this statement appears: Worked
8 in conjunction with Texas CNS Reimbursement Team
9 designed and implemented mental health care Best
10 Practices symposium. Did I read that right?

11 A. Yes, sir.

12 Q. Now, what was the Best Practices -- the mental
13 health care Best Practices symposia?

14 A. That was the symposia that we discussed earlier
15 that was in May or June of 1996.

16 Q. The one that was the first public discussion,
17 as far as you know, of the Tri-University Guidelines?

18 A. Yes, sir.

19 Q. There's a -- a second -- what I'll call a
20 subpoint under that heading, and it reads, "Instrumental
21 in influencing Texas mental health care funding and
22 treatment guidelines to ensure patient access to newer
23 antipsychotic medications." Did I read that right?

24 A. Yes, sir.

25 Q. Again, is listed as one of your accomplishments

1 in 1996; is that right?

2 A. Yes, sir.

3 Q. After reading this document, do you believe
4 that Janssen did provide funding to help put on this
5 symposium in Austin in May, June 1996?

6 A. Yes.

7 Q. This was Exhibit 230 marked during the
8 deposition of Mr. Sid Frank.

9 A. Uh-huh.

10 Q. The goal or objective at the top of this page
11 is, quote, To train the CNS Sales Teams, Managed Care
12 Business Managers and State Government Affairs in the
13 effective use of Reimbursement Tools, including -- and
14 then there are several listed -- Tri-University
15 Guidelines, Performance Guarantee Program, Cost Model,
16 Pathways, Creative Contractual Alternatives. Did I read
17 all those correct?

18 A. Yes, sir.

19 Q. This isn't the first document to refer to the
20 Tri-University Guidelines --

21 A. Yeah.

22 Q. -- as a tool, is it?

23 A. No, sir, it's not.

24 Q. All right. And below the goal or objective,
25 the next heading is "Focused Plan for Accomplishment";

1 is that right?

2 A. Yes, sir.

3 Q. The next one says -- next bullet point says,
4 "Provide educational materials, speaker support,
5 et cetera, surrounding the Tri-University Guidelines."
6 And the abbreviation TUG --

7 A. Yes, sir.

8 Q. -- appears, correct? And is that the sort of
9 thing you were doing when you put on the symposium in
10 Austin back in May, June of 1996?

11 A. An education -- an educational program, yes.

12 Q. ... intended to do that, but was it also
13 intended to increase Risperdal sales by --

14 A. By increasing access to all --

15 Q. -- making --

16 A. -- atypicals.

17 Q. -- atypical antipsychotics more widely
18 available? Is that right?

19 A. Yes, sir.

20 Q. You-all weren't out as some sort of Teach for
21 America operation where you just were interested in
22 dispensing education?

23 A. We were interested in educating psychiatrists
24 and other mental health providers on what the experts
25 thought was the most effective way to treat the mentally

1 ill.

2 Q. All right.

3 A. If it increased sales, we were not
4 disappointed.

5 Q. All right. And can you tell us what
6 Exhibit 1203 is?

7 A. Just to repeat, it is -- it's -- I -- it
8 appears to me to be a Risperdal strategy meeting
9 summary.

10 Q. And you, sir, were one of the individuals who
11 participated in this meeting of April 29th, 1998,
12 correct?

13 A. Yes, sir.

14 Q. It says -- the first paragraph says, "On
15 April 29, J&J State Government Affairs (SGA) the
16 Risperdal Brand and Janssen Reimbursement met to discuss
17 strategies to communicate the Risperdal cost and dosing
18 story to decision-makers in State Medicaid and Mental
19 Health." Did I read that correctly?

20 A. Yes, sir.

21 Q. Tell us, then, on the -- on the final paragraph
22 under SGA Strategy, it says, quote, The core elements of
23 these presentations may include some or all of the
24 following: clinical presentation; HCFA/NIMH Medicaid
25 letter; Soumerai, et al --

1 A. Soumerai.

2 Q. -- studies; algorithms favoring Risperdal; and
3 state specific present and future budget impact of
4 atypicals. First, did I read that correctly?

5 A. Yes.

6 Q. And so when it says "algorithms favoring
7 Risperdal," you don't disagree that that was discussed
8 at this Risperdal strategy meeting, correct?

9 A. I don't disagree.

10 Q. Okay. Then it says Next Step. And I want to
11 read the second half of that first paragraph. "Pilot
12 states will be used to test the message and strategy.
13 These presentations will be made jointly by the SGA
14 field director and the Janssen reimbursement manager.
15 Texas has been selected as the first test state." Did I
16 read that correctly?

17 A. Yes.

18 *(Video stopped)*

19 MR. MELSHEIMER: That concludes the
20 plaintiffs' presentation of Mr. Struyk.

21 MR. McCONNICO: Johnson & Johnson has a
22 very short presentation.

23 *(Video played as follows:)*

24 **CROSS-EXAMINATION**

25 Q. All right. And when you say you were hoping to

1 increase access for -- for the purposes of your
2 employer, did that mean access to Risperdal?

3 A. Our goal -- actually, we would not be
4 disappointed if it increased access to Risperdal, but
5 our goal was to --

6 Q. But was the idea that the work of your group
7 would help to create opportunities for Janssen to
8 receive payments in --

9 A. The objective of our group was to remove
10 administrative hurdles that existed as -- on a class of
11 atypical antipsychotics, and if it benefitted --

12 Q. And could you explain how -- this was a mission
13 statement, but how was reimbursement to go about
14 accomplishing it, that mission statement?

15 A. Our mission was clearly to work with
16 policymakers -- policy decision-makers within the
17 various mental health systems of care to educate them on
18 the benefits of atypical antipsychotics and to
19 improve -- where hurdles existed, to improve access to
20 remove those hurdles in the interest of making sure that
21 people had it access to the medications that they
22 needed.

23 *(Video stopped)*

24 MR. McCONNICO: That concludes Johnson &
25 Johnson's presentation.

1 MR. MELSHEIMER: May it please the Court,
2 Your Honor. We have a live witness, and we're going to
3 need just a moment to move the --

4 THE COURT: Actually, what we're going to
5 do is take a ten-minute break. I'll see y'all back.

6 MR. MELSHEIMER: Thank you, Your Honor.

7 *(Recess taken)*

8 *(Jury present)*

9 THE COURT: Call your next witness,
10 please.

11 MR. MELSHEIMER: Your Honor, we call Allen
12 Jones.

13 *(The witness was sworn)*

14 MS. ARBAUGH: May it please the Court.

15 **ALLEN JONES,**

16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 BY MS. ARBAUGH:

19 Q. Tell the jury who you are.

20 A. My name is Allen Jones.

21 Q. Where do you live?

22 A. Central Pennsylvania.

23 Q. How long have you lived in Pennsylvania?

24 A. All of my life.

25 Q. And where in Pennsylvania did you grow up?

1 A. In the Appalachian region of central
2 Pennsylvania, about an hour away from Harrisburg.

3 Q. Are you married, sir?

4 A. Yes, I am.

5 Q. How long?

6 A. Four years.

7 Q. Do you have any children?

8 A. Yes. I have five, including three from my
9 wife's previous marriage.

10 Q. How old are you?

11 A. I am 57.

12 Q. Are you a grandfather yet?

13 A. Yes. I have a 13-year-old grandson and
14 granddaughters ten and two.

15 Q. Where did you go to high school, sir?

16 A. I graduated from West Snyder High School in
17 Beaver Springs, Pennsylvania back in '72.

18 Q. And did you go to college?

19 A. Yes. I graduated Penn State University in 1977
20 with a bachelor's degree in health physical education
21 and recreation with a therapeutic recreation option.

22 Q. A degree in health physical education and
23 recreation with a therapeutic recreation option?

24 A. Correct.

25 Q. What exactly does that mean?

1 A. A recreational therapist works with physically
2 and mentally challenged individuals in helping them to
3 acquire skills and to otherwise expand their life and
4 enjoy their usual time.

5 Q. So was working with mentally and physically
6 challenged individuals a special area of interest for
7 you?

8 A. Yes, it was.

9 Q. What are the kinds of things you did in this
10 area while you were in college?

11 A. While I was still in college, I worked with a
12 community advocacy group to design and develop and
13 implement recreational programs in the community for
14 mentally challenged children, adolescents and adults.

15 Q. What did you do after graduating from Penn
16 State?

17 A. My first job was as a human resources or human
18 services program planner.

19 Q. What did you do in that job?

20 A. My main project was the design and development
21 in grants writing for a two-county rural transportation
22 system to get handicapped and elderly people to
23 necessary appointments, to the centers and doctors and
24 so forth.

25 Q. What did you do after that?

1 A. I became an adult probation and parole officer.

2 Q. How long were you a probation officer?

3 A. Nearly ten years.

4 Q. And what did you do as a probation officer?

5 A. My specialty was in supervising chemically
6 dependent mentally handicapped or mentally ill criminal
7 offenders.

8 Q. You stated you were a probation officer for ten
9 years. So does that bring us to approximately 1988?

10 A. Yes, it does.

11 Q. What did you do for work after working as a
12 probation officer?

13 A. I went to work at the Office of Inspector
14 General in Pennsylvania as a fraud investigator.

15 Q. You call that OIG for short?

16 A. Yes, I do.

17 Q. What is the purpose of the Office of the
18 Inspector General?

19 A. The office is charged with investigating fraud
20 within or against the State of Pennsylvania.

21 Q. Now, is this the only time you worked at the
22 OIG?

23 A. No. I had two tenures there.

24 Q. All right. I just want to talk about -- stay
25 focused on the first time now.

1 A. Sure.

2 Q. What was your title the first time you were at
3 the OIG?

4 A. I was an investigator 2.

5 Q. And what department were you in?

6 A. I was assigned to work in the Department of
7 General Services which oversaw all state construction
8 projects.

9 Q. What did it mean to be an investigator 2?

10 A. That was a mid-level journeyman investigator
11 position.

12 Q. So when you started at the OIG, did they give
13 you credit for your prior investigation training and
14 experience --

15 A. Yes, they did.

16 Q. -- as a probation officer?

17 A. I'm sorry. Yes.

18 Q. What did you do as an investigator 2?

19 A. I -- there was really three components to my
20 job.

21 Q. All right. So once you were assigned a project
22 to work on --

23 A. Uh-huh.

24 Q. -- what was the first thing you did?

25 A. To look at the allegations and to determine

1 whether they're founded or not founded, whether they're
2 true or false.

3 Q. And if you determined that the allegations that
4 were brought to you were true, what was the next thing
5 you did?

6 A. I put the situation into context. I would look
7 at how it happened, was it mistake, was it fraud, was it
8 incompetence, was it just a glitch, and try to determine
9 the nature of the problem.

10 Q. After that, what did you do?

11 A. I would make recommendations to the inspector
12 general, to the Department of General Services, to
13 remedy the problem and prevent it in the future.

14 Q. How long were you an investigator for the OIG
15 between the two times you worked for the OIG?

16 A. A total of five years.

17 Q. During the first time that you worked at the
18 OIG, were you promoted at all?

19 A. Yes. I received two promotions during that
20 time.

21 Q. So when was it you left the OIG the first time?

22 A. In 1991.

23 Q. And why did you leave the OIG that time?

24 A. I had two adolescent teen daughters at home who
25 really needed a lot of my time, and my job was an hour

1 plus away with frequent travel. I wanted to be closer
2 to home to attend to my responsibilities there.

3 Q. Did you do other work after leaving the OIG?

4 A. Yes, I did.

5 Q. And what did you do?

6 A. For the next 11 years I bought, rehabilitated
7 and sold residences.

8 Q. When did you go back to the OIG?

9 A. It was in early May of 2002.

10 Q. How old were you when you went to work for the
11 OIG the second time?

12 A. 48.

13 Q. And why did you go -- decide to go back to the
14 OIG?

15 A. Well, my major responsibilities in life were
16 met. My children were educated. They were independent
17 and on their own. I had provided a home for my parents.
18 I had only myself to think about. And I wanted to not
19 work so hard physically. And I enjoyed my time with the
20 IG and desired to go back.

21 Q. Now, the second time you were at the OIG --

22 A. Yes.

23 Q. -- did you do investigative work like the first
24 time?

25 A. Yes, I did.

1 Q. What area did you work in the second time you
2 were at the OIG?

3 A. I was assigned to the team that was responsible
4 for the Department of Public Welfare and program
5 reviews.

6 Q. Can you move the mike a little back there?

7 A. Okay. Sorry.

8 Q. What were your job functions the second time
9 you worked at the OIG?

10 A. Well, in the Department of Public Welfare, we
11 would investigate allegations in the manner that I
12 described before, although not quite so thoroughly.
13 Things had changed. As the program review function, we
14 would put problems, again, in context, try to determine
15 how things occurred and remedy the problems.

16 Q. When did you leave the OIG the second time?

17 A. 2004.

18 Q. Why did you leave?

19 A. I was fired.

20 Q. Why were you fired?

21 A. For having gone to the *New York Times* with
22 information relative to problems that the IG was
23 covering up.

24 Q. Why didn't you go to your boss?

25 A. I did many times. He was not receptive.

1 Q. Okay. I want to get to that a little bit
2 later. But who was your boss this second time you were
3 at the OIG?

4 A. Dan Sattelle.

5 Q. Did you know him previously?

6 A. Yeah. He was there the first time I worked
7 there.

8 Q. Did you have a good relationship with him?

9 A. Yeah, we liked and respected each other.

10 Q. So what was your first big assignment at the
11 OIG this time?

12 A. It was a matter involving Steve Fiorello, the
13 state's chief pharmacist.

14 Q. All right. So somebody brought some
15 allegations to you concerning the state's chief
16 pharmacist, Mr. Steve Fiorello?

17 A. Yes. It was alleged that he might be managing
18 a bank account that was not registered and that he might
19 be working part time for drug companies and not
20 reporting his income to the Ethics Commission.

21 Q. Who assigned that case to you?

22 A. Dan Sattelle.

23 Q. When was that?

24 A. In August -- I think the third week of August
25 in 2002.

1 Q. What was Mr. Fiorello's job as the state's
2 chief pharmacist?

3 A. Mr. Fiorello was the point man on the state
4 formulary committee, which determined which drugs could
5 be used within the commonwealth.

6 Q. What's a formulary?

7 A. The formulary is a list of drugs approved for
8 reimbursement. In order for a state doctor to use a
9 drug and have it be paid for, the drug first has to be
10 listed on the formulary.

11 Q. Now, was this a brand new file at the time it
12 was brought to you?

13 A. No. Two other investigators had worked on the
14 case for two months, I believe.

15 Q. And who was the lead investigator once the case
16 was brought to you?

17 A. I was.

18 Q. Did you have a partner, an assistant
19 investigator, working with you?

20 A. Yes, Investigator Kathy Butler was my
21 assistant.

22 Q. So what was the first thing you did in your
23 investigation once this file was brought to you?

24 A. I reviewed the file cover to cover to determine
25 what had already been done, to learn the information in

1 the interviewer's notes, and review the documents that
2 had been gathered so far.

3 Q. When you looked at the documents in the file,
4 what did it reveal to you?

5 A. That -- excuse me, that indeed there was a very
6 suspicious account that was not registered with the
7 comptroller, it was not subject to audit, it had been
8 opened by Steve Fiorello -- by Steve Fiorello's
9 secretary, kept in a checkbook kept in a draw type of
10 thing, and the account was used to deposit monies from
11 drug companies into.

12 Q. Did you attempt to figure out whether or not
13 there was any relationship or employment affiliation
14 between Mr. Fiorello and Harrisburg State Hospital?

15 A. Yeah. The information relative to the account
16 were grants to Harrisburg State Hospital, and
17 Mr. Fiorello was not employed by Harrisburg State
18 Hospital. He was employed by the Pennsylvania Office of
19 Mental Health and Substance Abuse Services.

20 Q. So when you saw this suspicious account, what
21 was your reaction?

22 A. There's real problems here. I mean, on many
23 levels the account was improper.

24 Q. And you mentioned drug company money was going
25 into the account?

1 A. Yes.

2 Q. Did that include money from Janssen?

3 A. Yes, it did.

4 Q. How many payments at that point did you see
5 from Janssen?

6 A. Two.

7 Q. So did you report to your supervisor what you
8 saw after your initial review of the file?

9 A. Yes, I did.

10 Q. Did you discuss with him how to proceed?

11 A. Yes, I did. I decided it was time to talk to
12 the drug companies involved and to the representatives.

13 Q. Did he give you authorization to proceed?

14 A. Yes, he did.

15 Q. And were some of the employees you interviewed
16 Janssen employees?

17 A. Yes.

18 Q. Who did you interview first and when?

19 A. First I interviewed Michael Chester, a Johnson
20 & Johnson attorney who was assigned to work with Janssen
21 at their Titusville office. That was in early August of
22 2002.

23 Q. Did Mr. Chester provide you with any documents?

24 A. Yes, he did.

25 Q. I'd like you to take a look at Plaintiffs'

1 Exhibit 1679. I'm going to put that on the screen for
2 the jury as well. And that should be behind Tab 1 of
3 your notebook, Mr. Jones.

4 A. Yes, ma'am.

5 Q. Can you tell the jury what 1679 is?

6 A. It is a copy of a check and a check stub from
7 Janssen Pharmaceutica through Johnson & Johnson, as
8 paying agent, to the Harrisburg State Hospital in the
9 amount of \$1,765.75.

10 Q. Is this one of the payments from Janssen you
11 had seen going into the account related to Harrisburg
12 State Hospital?

13 A. Yes, ma'am.

14 Q. If you'll turn to the second page of
15 Exhibit 1679, tell the jury what that is.

16 A. This is a document entitled -- it is an
17 internal Janssen document entitled Public Sector &
18 Institutional Business Grant/Funding Request Form.

19 Q. And did you understand that this grant request
20 form that was Janssen's document related to the payment
21 we looked at on the first page of this document?

22 A. Yes, it did.

23 Q. And does the amount requested that's circled on
24 this document in fact match up with the amount of that
25 payment?

1 A. To the penny, yes.

2 Q. Did somebody -- some individuals from Janssen
3 sign this grant request form approving it?

4 A. Yes, ma'am, Yolanda Roman and Sid Frank.

5 Q. And this was for an event date to occur in
6 March 2001; is that correct?

7 A. Yes, March 13th through 15th, 2001.

8 Q. What did Janssen state was the reason for
9 supporting this project?

10 A. The Office of Mental Health TMAP initiative to
11 expand atypical usage and drive Steve Shon's expenses.

12 Q. And what did Janssen state was the deliverable?

13 A. Successful program with solid attendance and
14 quality attendees. CNS follow-up with attendees.

15 Q. Let me ask you, had you ever heard of TMAP
16 prior to working on this case at the OIG?

17 A. No, ma'am.

18 Q. Had you heard of Steve Shon?

19 A. No.

20 Q. Did you do some research and determine from the
21 documents that you found at that time who Steve Shon
22 was?

23 A. Yes, ma'am. He was the director of the Texas
24 Department of Mental Health and Mental Retardation.

25 Q. And did you, when you looked at the documents,

1 determine anything at all in terms of whether he was
2 connected to TMAP?

3 A. Yes. He was the director of the TMAP program.

4 Q. Now, this deliverable we just looked at a
5 minute ago mentioned CNS follow-up with attendees. Did
6 you investigate what CNS meant?

7 A. I did. It was Comprehensive NeuroScience, one
8 of the third-party vendors for Janssen.

9 Q. So did you look into figuring out what their
10 role was?

11 A. CNS generally put together conferences,
12 programs as a third-party vendor for Janssen
13 Pharmaceutical.

14 Q. And if you'd turn to the next three pages of
15 the exhibit.

16 A. Yes.

17 Q. Just look at the next page. What is contained
18 on the next page?

19 A. This is an educational grant letter of
20 agreement between Janssen Pharmaceutica and Harrisburg
21 State Hospital for a program entitled Promoting Best
22 Practice for Schizophrenia Treatment.

23 Q. And the dates on that letter of agreement match
24 the dates we looked at on the grant request form,
25 correct?

1 A. Correct.

2 Q. Who signed this Janssen letter of agreement?

3 A. Steve Fiorello signed it for Pennsylvania,
4 Laurie Snyder signed it for Janssen.

5 Q. And if you look at the next -- just tell the
6 jury what the next few pages are in this document.

7 A. The next few pages are an accounting and
8 projection of travel expenses for Steve Shon's trip to
9 Pennsylvania.

10 Q. And what's on the last page of 1679?

11 A. It's an invitation that was sent out to
12 Pennsylvania officials to attend Mental Health Second
13 Phase TMAP Programs: Promoting Best Practice for
14 Schizophrenia Treatment. It was held at three state
15 hospitals across the state.

16 Q. Okay. Who presented at that program?

17 A. Steven Karp, the medical director in
18 Pennsylvania, Steven Fiorello, another doctor in
19 Pennsylvania, Robert Davis, and Steven Shon.

20 Q. All right. If you'll -- let's turn to the next
21 exhibit in your notebook behind Tab 2, which is
22 Exhibit 1680.

23 A. Yes.

24 Q. And I'll ask you if you can tell the jury what
25 Exhibit 1680 is.

1 A. Yes. This is a copy of the check stub and the
2 check from Janssen Pharmaceutica via Johnson & Johnson
3 as payee -- payor or agent to the Harrisburg State
4 Hospital in the amount of \$4,000.

5 Q. All right. Does this relate to the second
6 payment from Janssen you saw going into the Harrisburg
7 State Hospital account?

8 A. Yes, ma'am.

9 Q. And on the second page, does that contain a
10 Janssen grant request form like the one we looked at a
11 minute ago?

12 A. Yes, ma'am.

13 Q. Okay. And does this grant request relate to
14 the 4,000-dollar payment?

15 A. Yes.

16 Q. And who signed this grant request form?

17 A. Sid Frank and Yolanda Roman.

18 Q. And what was the stated -- well, first of all,
19 what did Janssen state they were going to send the
20 check -- who did Janssen state they were going to send
21 the check to the attention of?

22 A. To the attention of Steve Fiorello.

23 Q. Okay. And what did Janssen state was the
24 reason for supporting this program?

25 A. Pennsylvania Office of Mental Health to meet

1 with TIMA group, specifically Dr. Trivedi to assist on
2 implementation of algorithm.

3 Q. And what did Janssen state was the deliverable?

4 A. Successful implementation of PennMAP.

5 Q. Did you know what TIMA was before you worked on
6 this investigation?

7 A. No, ma'am.

8 Q. What is TIMA?

9 A. The Texas Implementation of Medical Algorithm
10 project.

11 Q. Did you know who Dr. Trivedi was?

12 A. No.

13 Q. Did you determine who he was?

14 A. Yes. He's an academic at the Texas state
15 university and also a co-director of TMAP.

16 Q. So if you look to the next page of
17 Exhibit 1680, does this contain a letter of agreement
18 similar to the letter of agreement we looked at in the
19 prior document?

20 A. Yes, ma'am, it does.

21 Q. And what's the title of the program for this
22 letter of agreement?

23 A. Implementation strategies for TMAP.

24 Q. Who signed the letter of agreement?

25 A. Steven Fiorello signed it for Pennsylvania.

1 Laurie Snyder signed it for Janssen.

2 Q. So what did you determine, after you reviewed
3 these grant documents, was the purpose of these two
4 grants?

5 A. To promote the facilitation of -- promote the
6 adoption of TMAP in Pennsylvania as PennMAP.

7 Q. All right. I want to talk a little bit about
8 your interviews with Janssen employees. Did you take
9 notes of your interviews with Janssen employees?

10 A. Yes, ma'am, I did.

11 Q. If you'll look next at Plaintiffs' Exhibit 180,
12 tell the jury what that is.

13 A. This is a copy of the actual case record of my
14 notes that made it in the file regarding my interview
15 with Michael Chester.

16 Q. Did you ask Mr. Chester about the grant
17 payments that we just went over?

18 A. Yes, I did.

19 Q. What did he tell you about them?

20 A. That they came from a promotional account for
21 the drug Risperdal and that the grant documents were
22 incomplete and that it did not have a grant request from
23 the grantee. He explained that that was unusual.
24 Janssen has a policy that they will not issue a grant
25 without a grant request, but there were no grant

1 requests associated with these two grants.

2 Q. So when he told you that there were no grant
3 requests for these two grants that he could find --

4 A. Uh-huh.

5 Q. -- and that Janssen had a policy for having
6 such grant requests, what did that mean to you?

7 A. That was a real red flag for me. I mean, if a
8 policy is in place and not being followed, what other
9 policies might not being followed -- might not be
10 followed?

11 Q. And what did you think at this time when you
12 started to put together these records of grant payments
13 going into state accounts?

14 A. That they were all for the purpose of promoting
15 TMAP in Pennsylvania.

16 Q. Did you become more interested then in learning
17 what this TMAP program was about?

18 A. Oh, yes. Yes.

19 Q. So did you have some questions in your mind
20 about it?

21 A. Yes.

22 Q. Did you run down and answer some of those
23 questions?

24 A. Yes, I did.

25 Q. And when you did that, what did you figure out

1 about TMAP at this time?

2 A. That it was a treatment protocol originating in
3 Texas, directed and co-directed by academics and
4 physicians who all had financial ties to Janssen
5 Pharmaceutica. I determined that the algorithms
6 themselves promoted the use of first-line -- or very
7 expensive drugs as first-line treatments.

8 Q. And did you try to determine what that meant in
9 terms of having more expensive drugs on the first line?

10 A. Sure. It meant that the state was going to be
11 spending a whole lot more money for antipsychotics.

12 Q. And at that time, what did you think that that
13 meant in terms of the drug companies that were involved
14 with those more expensive drugs?

15 A. More sales was more profits, that it would be
16 very beneficial for the drug company.

17 Q. Did you follow up on the documents that you had
18 seen related to Steve Shon?

19 A. Yes, I did. I requested that there be an
20 accounting made of all expenditures from the
21 off-the-books account managed by Fiorello.

22 Q. And what did you determine?

23 A. I determined that there was a check issued from
24 that account directly to Dr. Steven Shon in the exact
25 amount of \$1,765.75, the exact amount of the first

1 grant.

2 Q. Let me ask you: Were you updating your
3 supervisor, Mr. Sattelle, at all during this time?

4 A. Yes, I was.

5 Q. What was his response?

6 A. Stay away from the drug companies. This is a
7 personnel matter. Do not investigate TMAP. Do not
8 investigate the drug companies.

9 Q. So did he just want you to limit your
10 investigation to Mr. Fiorello?

11 A. Yes, personnel issue.

12 Q. What did you do in response to that?

13 A. I continued looking at the entire big picture.

14 Q. After he said no?

15 A. Yes.

16 Q. Tell the jury, Mr. Jones, why did you do that?

17 A. My job was to investigate. I was an
18 investigator, a fraud investigator. I couldn't turn my
19 back on clear evidence that an impropriety was
20 occurring. And I believed at that time that if I kept
21 trying and kept pushing and kept getting more
22 information, that Dan would see and give me the go-ahead
23 to go -- okay to go ahead.

24 Q. Did you feel that uncovering TMAP was part of
25 your investigation?

1 A. It was part and parcel. They were interwoven.

2 Q. Why do you say that?

3 A. Well, you know, Fiorello was the center in
4 terms of the State, but TMAP was weaving through it.
5 Drug company money was weaving through it. It was much
6 larger than a personnel issue.

7 Q. Did you have any idea how much money was
8 involved at this time?

9 A. Not at the time.

10 Q. Did you continue interviewing Janssen employees
11 during this time?

12 A. Yes, I did.

13 Q. When did the next interview of a Janssen
14 employee occur?

15 A. September 5th, 2002.

16 Q. How do you remember that day?

17 A. It's my birthday.

18 Q. Who from Janssen did you talk to at that time?

19 A. I talked with Mr. Chester again, with Sid
20 Frank, Yolanda Roman and Laurie Snyder.

21 Q. Who did you understand Mr. Frank, Ms. Roman and
22 Ms. Snyder were within Janssen?

23 A. They were part of the institutional and public
24 benefits and health reimbursement team in Janssen.

25 Q. Did these Janssen employees give you some more

1 documents?

2 A. Yes, they did.

3 Q. I'll ask you to take a look at Plaintiffs'
4 Exhibit 181. What is Plaintiffs' Exhibit 181?

5 A. This is a copy of my notes to my personal
6 investigative file regarding the interview with those
7 individuals.

8 Q. And if you'll turn to the next document,
9 Plaintiffs' Exhibit 182 in your notebook.

10 A. Yes.

11 Q. What is that?

12 A. This is the official copy that went into the
13 file prepared by Kathy Butler of the interview notes for
14 the same meeting.

15 Q. Let me ask, during your September 5th interview
16 with the Janssen employees, did you discuss the two
17 payments we've talked about today?

18 A. Yes, I did.

19 Q. Okay. And what did you learn during the
20 interview about the first payment?

21 A. That it was intended to support Steve Shon's
22 visit to Pennsylvania to participate in programs
23 relative to TMAP.

24 Q. Did Janssen employees tell you anything about
25 requests Steve Shon had made in relation to that

1 payment?

2 A. Yeah. He said that Dr. Shon had specifically
3 requested that the money not come to him from Janssen,
4 but that it be given to the entities in Pennsylvania and
5 forwarded to him by that entity.

6 Q. What did you learn about the second payment?

7 A. That it was intended to provide for Fiorello
8 and another state doctor to travel to New Orleans to
9 meet with representatives of Comprehensive NeuroSciences
10 and Janssen and -- well, TMAP, to discuss the
11 implementation of TMAP in Pennsylvania.

12 Q. And you mentioned some other documents you
13 received from Janssen. What -- generally what were
14 those documents?

15 A. They were documents relative to other Janssen
16 grants to entities in Pennsylvania, most of them
17 funneled through Steven Fiorello.

18 Q. Did you learn anything about a payment to
19 Mr. Fiorello --

20 A. Yes, I did.

21 Q. -- from those documents?

22 A. I'm sorry. Yes, I did. There was a payment of
23 \$2,000 from Comprehensive NeuroSciences, as Janssen's
24 contractor, directed to Steve Fiorello as an honorarium
25 for a program he put on for Janssen.

1 Q. Was that subject of honoraria discussed with
2 Janssen employees in your September interview?

3 A. Yes, it was. Janssen employees said that
4 Janssen does not give honoraria to state employees.
5 They said that they were unaware that this check had
6 been issued and that they didn't know how it would --
7 how it happened.

8 Q. During that interview, did they acknowledge,
9 though, that an honorarium had been paid to
10 Mr. Fiorello?

11 A. Oh, yes. They gave me a copy of a check.

12 Q. What was your reaction to the fact that an
13 honorarium had been paid to Mr. Fiorello?

14 A. That was very alarming to me.

15 Q. Why?

16 A. The receipt of an honorarium by a public
17 employee in Pennsylvania who acts in an official
18 capacity is a felony.

19 Q. Did Janssen employees tell you anything else
20 about TMAP at this time?

21 A. Yolanda Roman said that Janssen via Johnson &
22 Johnson had funded the start-up of the TMAP program.

23 Q. Mr. Jones, what do you recall regarding your
24 conclusions at this time in early September 2002?

25 A. It was all really starting to come together for

1 me starkly that Janssen was directing these monies for a
2 specific purpose to implement a treatment protocol in
3 the state of Pennsylvania based on the Texas model. I
4 mean, it was being funded with monies that were given
5 contrary to procedure and received contrary to policy
6 and procedure.

7 Q. If you'll look back at your notes contained in
8 Plaintiffs' Exhibit 181, those were the notes you
9 briefly mentioned from some documents you obtained.

10 A. Yes, ma'am.

11 Q. And turn to the top of Page 5, the first
12 paragraph. Just generally, what was it that you started
13 to become concerned about?

14 A. There were references in documents that --
15 references and documents relating to off-label usage of
16 medications being addressed and discussed at some of the
17 presentations put on by Fiorello for Janssen.

18 Q. So in addition to becoming focused on TMAP as
19 part of your investigation, you also started looking at
20 off-label issues; is that correct?

21 A. Yes, I did.

22 Q. Now, did you continue to report to your
23 supervisor about your concerns at this time in early
24 September?

25 A. Yes, I did.

1 Q. And what was his response?

2 A. Back off of the drug companies, back off of
3 anything other than Fiorello, TMAP's out of the picture,
4 the drug companies are out of the picture, focus on
5 Fiorello.

6 Q. Did that stop your efforts to continue to
7 investigate the bigger fraud?

8 A. No, it did not.

9 Q. Did you continue pursuing the investigation you
10 thought you should pursue?

11 A. Yes, I did.

12 Q. Did you continue asking questions about TMAP?

13 A. Yes, I did.

14 Q. Did you continue to update the file with what
15 you found?

16 A. Yes, I did.

17 Q. And when you continued to investigate, did you
18 continue to find further evidence of wrongdoing?

19 A. Yes, I did.

20 Q. And did you go back to your boss, Mr. Sattelle,
21 again with your findings?

22 A. Yes, I did.

23 Q. And what was his response?

24 A. Back off of the drug companies, back off of
25 TMAP, drug companies write checks to both sides of the

1 aisle, stay away from it, focus on Fiorello, this is
2 going nowhere.

3 Q. What did you take that to mean?

4 A. That the case was done, this information would
5 never come to light.

6 Q. Did Mr. Sattelle at this time share with you his
7 personal views about what you were doing?

8 A. Yeah. He said that morally and ethically I was
9 correct, but that politically this was dead.

10 Q. Did he make any particular suggestions to you
11 for a way you should handle --

12 A. Yes.

13 Q. -- what you were finding?

14 A. Excuse me. He said that when the case was
15 closed, I should prepare a memo to the file outlining my
16 concerns, that we will give this memo to the Department
17 of Public Welfare who would, in his words, deep six it,
18 round can it, lose it, but if it ever blew up, the OIG
19 could say we told you so.

20 Q. Let me ask you, did that suggestion to you by
21 Mr. Sattelle --

22 A. I'm sorry, ma'am. I was distracted. Please
23 continue.

24 Q. Let me ask you, did that suggestion to you by
25 Mr. Sattelle satisfy you that the fraud you were

1 uncovering would be addressed?

2 A. No, just the opposite.

3 Q. Why?

4 A. Because the Governor Ridge had instituted a
5 policy in Pennsylvania with the IG -- excuse me, I'm
6 sorry -- that once an investigation was completed, the
7 file was shredded. All documents were destroyed except
8 the final report or a summary of the final report. Some
9 of the documents here today would not have been here. I
10 mean, they would have been gone and the matter would
11 have been dead.

12 Q. Did you try to go to anyone other than your
13 boss, Mr. Sattelle?

14 A. Yes, I did.

15 Q. And about -- in the fall of 2002, who did you
16 go to see?

17 A. I went to see Peter J. Smith, who was the first
18 inspector general of Pennsylvania and the man for whom I
19 had worked before. And he was currently the director of
20 investigations for the Auditor General's office.

21 Q. And why did you pick him?

22 A. I trusted him. I knew him to be an honest man.
23 And he was a dynamic inspector general himself.

24 Q. After speaking with Mr. Smith, did that satisfy
25 you that your concerns and what you had uncovered would

1 be addressed?

2 A. No, ma'am.

3 Q. So in the fall of 2002, as you're continuing to
4 update your supervisor, Mr. Sattelle, and you go to
5 Mr. Smith, why were you so persistent in not only
6 continuing to investigate, but going to those people at
7 that time?

8 A. I had -- in addition to my knowledge about
9 a lot of money perhaps being involved, I learned that
10 there were significant public health issues involved as
11 well.

12 Q. What do you mean by that?

13 A. I examined a Drug Utilization Review prepared
14 by Dr. Davis and Steve Fiorello in Pennsylvania, and it
15 had, frankly, some very alarming information.

16 Q. And what kind of alarming information?

17 A. I saw wide fluctuations in weight, with weight
18 gains. First of all, this review covered those state
19 mental health patients who had already been switched to
20 atypical antipsychotics. I saw fluctuations in weight
21 gains, with weight gain up to 250 pounds, wide
22 fluctuations in glucose, lipids, a case of
23 treatment-emergent diabetes. It was all there in their
24 own -- in their own review.

25 Q. You're not telling the jury you're a medical

1 expert?

2 A. Oh, no.

3 Q. Now, at the same time, in the fall of 2002, as
4 part of your investigation, what did you learn was
5 around the corner in regards to PennMAP?

6 A. PennMAP in Pennsylvania was going to be
7 implemented in one fell swoop. On January 1st, 2003,
8 all state mental health patients who were not already on
9 atypical antipsychotics would be switched to atypical
10 antipsychotics regardless of medical need or their
11 background. In Pennsylvania it was one fell swoop.

12 Q. Mr. Jones, I'm still getting a lot of feedback
13 from the microphone.

14 A. I'm sorry. I can't hear from here.

15 Q. All right. Did you tell your boss these
16 things?

17 A. Yes.

18 Q. Did he ever change his mind --

19 A. No.

20 Q. -- and allow you to pursue the investigation of
21 Janssen that you wanted to pursue?

22 A. No, ma'am, he did not.

23 Q. Did your continued pushing of the bigger fraud
24 you were finding end up having consequences at your job?

25 A. Yes, ma'am. I was removed from the lead

1 investigative position. I was marginalized completely.
2 I could no longer formulate questions to be asked at
3 interviews. I could no longer determine who was going
4 to be interviewed. I had nothing to do with the course
5 of the investigation from that point.

6 Q. Did you just passively let that treatment of
7 you happen?

8 A. No, ma'am, I did not.

9 Q. What did you do?

10 A. I filed a First Amendment civil rights lawsuit
11 against officials in the OIG to preserve my job and to
12 preserve the records for the new administration, hoping
13 that they would investigate.

14 Q. What ultimately happened to you in your role in
15 the investigation after you filed that lawsuit?

16 A. I was removed from that team completely. I had
17 no further input into the reporting. And I was assigned
18 to another team. Excuse me.

19 Q. What team were you assigned to?

20 A. Background investigations team.

21 Q. Even though you were removed to the background
22 investigations team, did you nevertheless continue to
23 try to piece together the pieces of the story that you
24 were uncovering?

25 A. Yes, ma'am, I did.

1 Q. How much time did you spend doing that?

2 A. Twenty to 40 hours most weeks.

3 Q. And did you do that on personal time?

4 A. Yes, evenings, weekends.

5 Q. Did you try to go to anyone else within the
6 State of Pennsylvania about what you were finding --

7 A. Yes.

8 Q. -- after you were removed as investigator?

9 A. Yes. New administration came in. I attempted
10 to see the new inspector general to present my concerns
11 to him.

12 Q. And did that satisfy you that the fraud you had
13 uncovered would be addressed?

14 A. No. He never gave me a meeting. He never
15 responded to my e-mails, nor did his chief counsel.

16 Q. So as you continued to investigate this, did
17 you develop strong feelings about what was going on?

18 A. Yes, I did.

19 Q. What did those strong feelings and concerns
20 cause you to do?

21 A. I went to the *New York Times* with the story of
22 what was happening.

23 Q. Why did you go to the *New York Times*?

24 A. The *New York Times* is a reputable paper with a
25 worldwide reputation, and I believed that if they would

1 tell the story, that it would be credible and that many
2 people would hear it.

3 Q. Prior to going to the *New York Times*, how long
4 was it you had spent trying to go through proper
5 channels to get this fraud addressed?

6 A. A year and a half.

7 Q. And what ultimately happened to your job after
8 the *New York Times* article came out?

9 A. I was fired.

10 Q. Why were you fired?

11 A. For having spoken to the *New York Times*.

12 Q. And why was that a basis for your firing
13 according to your employer?

14 A. Speaking to the press was a violation of IG
15 policy.

16 Q. Was everything you had uncovered been
17 confidential until you disclosed it?

18 A. Yes, ma'am, it was.

19 Q. You knew it was confidential, so why did you
20 disclose it?

21 A. This matter was being covered up and it was too
22 important to die.

23 Q. What did you do in response to being fired?

24 A. I filed a retaliation lawsuit against the OIG
25 officials.

1 Q. Is that lawsuit resolved?

2 A. Yes, they both were.

3 Q. Has your life changed much as a result of those
4 lawsuits?

5 A. No, I was -- with the settlement, I was able to
6 pay my debts, put new tires on my truck, I filled my
7 propane tanks, and I had \$1200 left.

8 Q. Did you receive any kind of severance or
9 unemployment benefits?

10 A. No.

11 Q. After you brought your retaliation lawsuit,
12 what else did you try to do to get the fraud you had
13 uncovered addressed?

14 A. I came to the State of Texas.

15 Q. When did you do that?

16 A. Early in 2004.

17 Q. Did you bring the State of Texas everything you
18 knew at that point?

19 A. Yes, ma'am, I did.

20 Q. Did you bring them all the documents you had?

21 A. Yes, ma'am.

22 Q. About how many documents did you bring them?

23 A. Probably two paper boxes full.

24 Q. And those documents include your witness
25 interview notes and records of payments such as the ones

1 we went over today?

2 A. Yes, ma'am, they did.

3 Q. Mr. Jones, do you realize that you will receive
4 a compensation if this jury finds that Janssen has done
5 wrong?

6 A. Yes, ma'am.

7 Q. What entitles you to this money?

8 A. The law.

9 Q. Do you disagree with this law?

10 A. No, ma'am. If it helps bring things like this
11 out, no.

12 Q. Tell the jury, Mr. Jones, why did you blow the
13 whistle?

14 A. The first people affected by TMAP, in
15 Pennsylvania as PennMAP, were the residents of mental
16 health hospitals, the people in the back woods who were
17 helpless and defenseless to take care of themselves.
18 They needed to trust the people taking care of them.
19 The people responsible for them were betraying them. I
20 couldn't be a part of that. I wouldn't be a part of
21 that. So I blew the whistle.

22 MS. ARBAUGH: Pass the witness.

23 THE COURT: Can we take just about a
24 five-minute break? Would y'all take a five-minute
25 break, go in, and then be prepared to come back out?

1 You may step down.

2 (Recess taken)

3 (Jury present)

4 THE COURT: All right. Saddle up.

5 Mr. McDonald.

6 MR. McDONALD: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 BY MR. McDONALD:

9 Q. Hello, Mr. Jones.

10 A. Good morning, Mr. McDonald.

11 Q. Good to see you again.

12 A. Same here.

13 Q. You live in Pennsylvania?

14 A. Yes, sir.

15 Q. And you've never lived in Texas, right?

16 A. No, sir.

17 Q. Okay. I think you said this earlier. You have
18 no medical training?

19 A. Correct.

20 Q. Never done a clinical study?

21 A. That's correct.

22 Q. Never studied antipsychotics?

23 A. That's right.

24 Q. Okay. You worked for the Office of Inspector
25 General in Pennsylvania?

1 A. Yes, I did.

2 Q. Sounds like you had a job very similar to
3 Ms. Hunt who we talked to the other day.

4 A. Yes, similar.

5 Q. Okay. While working for the Office of
6 Inspector General in Pennsylvania, you did an
7 investigation on Mr. Fiorello?

8 A. Yes, I did.

9 Q. And this was in the August, September of 2002
10 time frame?

11 A. Yes.

12 Q. Okay. And Mr. Fiorello was a Pennsylvania
13 state employee?

14 A. Yes, he was.

15 Q. All right. And it was during this
16 investigation you contend that you discovered the basis
17 of this lawsuit?

18 A. Yes, sir. Well -- yes.

19 Q. During your investigation for Pennsylvania, you
20 took some notes that we looked at earlier, right?

21 A. Yes, sir.

22 Q. Okay. Exhibits 180 and 181. And you obtained
23 documents from my client using your powers as an
24 employee for the Office of Inspector General, right?

25 A. Yes, sir.

1 Q. Okay. And we looked at some of those documents
2 as well, correct?

3 A. Yes.

4 Q. And my client was fully cooperative with you in
5 your investigation, weren't they?

6 A. Yes, I would say.

7 Q. Yeah. And you did all this investigation under
8 Pennsylvania state time as an employee of the State of
9 Pennsylvania?

10 A. Initially, yes.

11 Q. Okay. And then you -- you later shared all
12 this information that you gathered and notes that you
13 took on Pennsylvania state time and documents you got
14 using your subpoena powers with the *New York Times*?

15 A. I can't agree with some of the things in
16 your -- in your question.

17 Q. You shared information that you gathered as an
18 investigator for the State of Pennsylvania --

19 A. Yes.

20 Q. -- and documents you obtained using your powers
21 as an investigator with the *New York Times*?

22 A. Yes. There was no subpoena. We didn't
23 subpoena, but yes.

24 Q. And you knew that that was a violation of law
25 for you to do that, right, to share that information

1 with the *New York Times*?

2 A. No, sir, it wasn't a violation of law. It was
3 a violation of OIG policy.

4 Q. A violation of policy from your employer?

5 A. Correct.

6 Q. You were ultimately fired?

7 A. Yes, I was.

8 Q. But before being fired, you came to the State
9 of Texas and met with your lawyers, right?

10 A. Yes.

11 Q. And you gave this information to your lawyers
12 before you were fired, right?

13 A. Yes, I did.

14 Q. While you were still employed by the State of
15 Pennsylvania?

16 A. Yes, sir.

17 Q. Did you tell anybody in Pennsylvania who was
18 employing you that you had come to Texas to talk to
19 lawyers about filing a lawsuit?

20 A. No, I did not.

21 Q. Did you ever look at filing a lawsuit in
22 Pennsylvania instead of here?

23 A. No.

24 Q. Why didn't you just go straight to the Texas
25 attorney general with the information you had?

1 A. I had tried for a year and a half
2 approaching -- to approach state entities in
3 Pennsylvania and other states on my own and had no
4 success whatsoever. Texas was my last chance for any
5 kind of assistance.

6 Q. And so when you came to Texas, rather than go
7 to the attorney general, you went to private lawyers?

8 A. Yes, I did.

9 Q. Okay. And in the lawsuit you filed, you're
10 claiming that Dr. Shon and Dr. Rush and Dr. Miller and
11 Dr. Crismon and Dr. Chiles breached the fiduciary duties
12 they owed to the State of Texas?

13 A. Yes, sir.

14 Q. And if Texas prevails in this case, you and
15 your lawyers stand to participate in that recovery?

16 A. Yes, sir.

17 Q. And you're seeking millions and millions of
18 dollars?

19 A. Yes, sir.

20 Q. And again, you filed that lawsuit -- this
21 lawsuit while you were still employed by the State of
22 Pennsylvania, right?

23 A. That is correct.

24 Q. Okay. You contend that Janssen influenced the
25 development of TMAP, right?

1 A. Yes.

2 Q. Yet you have no idea what TMAP would have
3 looked like absent Janssen's supposed involvement in
4 TMAP, right?

5 A. Absent Janssen's involvement, I do not believe
6 there would have been a TMAP.

7 Q. That's just your total speculation, though,
8 isn't it?

9 A. It's my deduction based on the evidence.

10 Q. That's your personal opinion and speculation
11 about what would have happened had Janssen not been
12 involved, right?

13 A. Yes, that is my opinion. Yes, sir.

14 Q. Okay. You have no idea what would have
15 happened if Janssen hadn't been involved, do you?

16 A. No.

17 Q. It's not your contention in this lawsuit that
18 without TMAP, doctors in Texas would not have prescribed
19 atypical antipsychotics to patients, is it?

20 A. No, it's not.

21 Q. You have no idea what doctors in Texas would
22 have done absent TMAP, right?

23 A. That's correct.

24 Q. In fact, you have no idea what patients
25 received medications as a result of TMAP, do you?

1 A. That is correct.

2 Q. Prior to bringing your lawsuit, you were
3 required by law to make a disclosure to the Texas
4 Attorney General's Office, right?

5 A. Yes, sir, I was.

6 MR. McDONALD: And if we could show
7 Defendants' Exhibit 470.

8 Q. (BY MR. McDONALD) And this is the disclosure
9 you made, correct?

10 A. Yes, sir.

11 Q. You did this on May 25th of 2004?

12 A. Yes.

13 Q. Okay. And you didn't hold anything back, did
14 you?

15 A. Not to my knowledge.

16 Q. You told them everything you knew at that time?

17 A. I gave them all that I had.

18 Q. Right. Because that's what you needed to do by
19 law, was to tell them every piece of information you
20 had?

21 A. Yes, sir.

22 Q. Okay. There's nothing in this document about
23 off-label promotion, is there?

24 A. Sir, that's a lengthy document. I haven't read
25 it for -- I can't tell you when. I do not know if it

1 was mentioned in the first document -- sorry, in that
2 document.

3 Q. You don't know if you told the State of Texas
4 about off-label promotion?

5 A. I'm not sure if it is in that document.

6 Q. I can't find it.

7 A. Okay. It was -- okay.

8 Q. So do you have any reason to believe that it is
9 in there?

10 THE COURT: Well, time out. The witness
11 has indicated that he would like to be furnished the
12 document.

13 Q. (BY MR. McDONALD) Let me show you. Here's a
14 copy.

15 THE COURT: Just furnish him the document
16 and give him a chance.

17 A. Okay. Sir, there's a lot of redacted spaces in
18 here. I have no idea if it could have been or not.

19 Q. (BY MR. McDONALD) Your lawyers redacted that.

20 THE COURT: At the Court's direction.

21 Q. (BY MR. McDONALD) At the Court's direction.

22 A. Well, my memory doesn't -- I can't -- I cannot
23 say one way or the other, sir, with respect, whether or
24 not it was in here.

25 Q. Do you say anything in the document about

1 Risperdal being misbranded?

2 A. I don't think that term was -- I did not use
3 that term. It's a relatively recent term.

4 Q. Did you say anything in the document about
5 Janssen's promotional practices?

6 A. Yeah, I believe so.

7 Q. You said stuff in that document about Janssen's
8 call notes?

9 A. No. That came through the suit itself.

10 Q. What did you know about Janssen's promotional
11 practices that's in that document?

12 A. Again, with -- with the massive redactions and
13 my lack of ability to memorize the whole document, I
14 can't address that, sir. I wish I could.

15 Q. Mr. Jones, I would love to give you the entire
16 document without redactions, but your lawyers at the
17 Court's direction did that. That's all I have.

18 THE COURT: Time out. May I see the
19 attorneys over in the corner?

20 *(Discussion off the record)*

21 Q. (BY MR. McDONALD) Mr. Jones, in the document
22 that you have before you, is there any information about
23 promotional practices?

24 A. My answer remains the same. I do not have the
25 document memorized. There are massive redactions. I

1 cannot address the issue, sir. I wish I could.

2 Q. Isn't it true that the only thing you discuss
3 in that document is TMAP and PennMAP?

4 A. Again, I know I discussed TMAP and PennMAP at
5 length. Yes, Your Honor -- or yes, sir.

6 Q. And you talk about some publications that you
7 read, right?

8 A. Yes.

9 Q. Let's talk about some documents your lawyer
10 mentioned in his opening statement.

11 A. Sure.

12 Q. About -- let's look at what he showed the jury
13 in his opening statement, Exhibit 41. You didn't have
14 that when you filed this lawsuit, did you?

15 A. No. That came from discovery.

16 Q. How about Exhibit 1312? You didn't have that
17 when you filed this lawsuit, did you?

18 A. No. That was from discovery.

19 Q. Exhibit 340, did you have that when you filed
20 the lawsuit?

21 A. No, sir.

22 Q. How about Exhibit 1?

23 A. Well, may I back up, sir?

24 Q. Sure.

25 A. Is that the one where they directed Janssen not

1 make representations regarding Risperdal? That --
2 because that information I did have. I didn't have the
3 document, though.

4 Q. Let me show you.

5 A. Okay. No, sir, I did not have this document.

6 Q. All right. How about Exhibit 1? Did you have
7 this document?

8 A. No.

9 Q. How about Exhibit 2?

10 A. No.

11 Q. Exhibit 59?

12 A. No.

13 Q. 48?

14 A. No, sir.

15 Q. 126?

16 A. No, sir. All of these came from discovery.

17 Q. 494?

18 A. No, sir.

19 Q. 3?

20 A. No, sir.

21 Q. 263?

22 A. No, sir.

23 Q. Go to the next one. 78?

24 A. No.

25 Q. 433?

1 A. No, sir.

2 Q. 101?

3 A. No.

4 Q. 71?

5 A. No.

6 Q. 98?

7 A. No.

8 Q. 1113?

9 A. No.

10 Q. 58?

11 A. No.

12 Q. 985?

13 A. No.

14 Q. 2201?

15 A. No.

16 Q. Mr. Jones, those are all the documents that
17 your lawyers talked to the jury about in opening
18 statement. You didn't have any of this stuff when you
19 filed the lawsuit, did you?

20 A. They were a product of discovery. No, I did
21 not.

22 Q. You're not the source of these documents to the
23 State of Texas, are you?

24 A. No, sir.

25 Q. Prior to filing this lawsuit, you also put a

1 story out on the Internet, right?

2 A. I did not post it. I granted permission to the
3 Web host to post it.

4 Q. Nonetheless, your story and everything you
5 knew, you published to the world on the Internet?

6 A. Oh, no, sir. No.

7 Q. So you deny your smoke and mirrors story on the
8 Internet?

9 A. No, no. The story was not everything I knew
10 that was relevant.

11 Q. It was the basis of this lawsuit that you put
12 on the Internet, wasn't it?

13 A. A lot of the information was. But what I'm
14 saying is it was not all that I knew.

15 Q. You publicly disclosed to the world the
16 information that was the basis of this lawsuit?

17 A. Yes, sir. It was my message in a bottle. Yes,
18 it was.

19 Q. That you published to the public?

20 A. That was published by Mr. Gottstein.

21 Q. With your permission?

22 A. Yes.

23 MR. McDONALD: That's all I have.

24 **REDIRECT EXAMINATION**

25 BY MS. ARBAUGH:

1 Q. Mr. Jones, did you know by the time you filed
2 this lawsuit that you could receive a portion of
3 recovery?

4 A. Yes. By the time I filed, yes, I did.

5 Q. Did you learn that you could receive a portion
6 of the recovery in this lawsuit before or after you
7 decided to bring the fraud that you uncovered to the
8 State of Texas?

9 A. I learned about that during the meeting with my
10 attorney and the State of Texas.

11 Q. Do you have a say in how much you receive?

12 A. No, ma'am, I do not.

13 Q. Who do you understand makes this determination?

14 A. It is my understanding that Judge Dietz will
15 make the decision, maybe with the consideration of
16 recommendations of the attorney general.

17 MS. ARBAUGH: No further questions.

18 MR. McDONALD: I have no questions.

19 THE COURT: This is a good time for us to
20 take a break. I'll see y'all back shortly before 1:30.
21 Thank you. We're in recess.

22 *(Lunch recess taken)*

23 *(Jury not present)*

24 MR. JACKS: I've gotten a closer count on
25 how much time we'll consume with the depositions this

1 afternoon.

2 THE COURT: Uh-huh.

3 MR. JACKS: And we've made up even more
4 ground than I thought. But there is one exhibit with
5 one of the depositions --

6 THE COURT: So what's the prospective end
7 time?

8 MR. JACKS: It's an hour and 34 minutes,
9 plus time to read in three documents, so call it an hour
10 and 45 minutes' worth of -- there's one argument we have
11 over the one exhibit to the Schroeder deposition.

12 MS. APPLEBERRY: Two.

13 MR. JACKS: Two? Two exhibits, I'm sorry,
14 to the Schroeder deposition. So perhaps I --

15 THE COURT: Let me -- I'll just talk to
16 the jury in open court and I'll say that there's work to
17 be done on getting ready for the future stuff, and
18 we're --

19 MR. JACKS: Which is actually --

20 THE COURT: -- we're slightly ahead of
21 schedule.

22 MR. JACKS: -- actually conveniently true.

23 THE COURT: All the more reason to grant
24 Steve's motions to exclude. Okay. Bring them in.

25 *(Jury present)*

1 THE COURT: So let me explain a couple of
2 things. As you can tell you when look at the
3 depositions and they've got the date on there, we've
4 been working 2007, 2008, 2009. And I don't know if you
5 watched in this one deposition we had today, but the
6 fellow started off with a nice Starbucks icy something
7 or another, and then by 6:00 o'clock that night it was
8 all gone, his coat was off and he was looking a little
9 ragged. So these things are very, very long.

10 So what happens is that as -- as the
11 parties get ready for trial, they start winnowing down.
12 And we have -- part of it is that they have worked --
13 both sides have worked very cooperatively with one
14 another, but we'll get down -- and I'm looking, and I
15 think this may be it. But I'll get this many
16 (indicating) "We want to put all of this in." "No, they
17 shouldn't be able to put some of it in," because there's
18 a lot of stuff that goes on in the course of the
19 deposition. And so the reason that some of it is like
20 he'll be talking and then, oh, and then he'll come back,
21 is because we're taking out -- like somebody has said,
22 "Objection, form," so we're taking that little stuff
23 out. Anyway, then we have -- here was "We're putting in
24 300 exhibits," and I have got to rule on their
25 admissibility and stuff. So we're taking it in

1 bite-size chunks as we go along.

2 I think today we're going to finish up
3 probably about 3:30 or 3:45, and I'm going to let y'all
4 go at that time, because we've got several hours of work
5 to try to do to make sure that we're rolling smooth on
6 down the line.

7 In terms of where we projected we will be,
8 we're slightly ahead of where we thought we would be.
9 And so we're very mindful about the time commitment, and
10 we're seeing if we can accelerate it all the time, but
11 there's just -- I'm sorry. We're not intentionally
12 trying to inconvenience you, but there's just really
13 a lot of stuff in this to go back over. So we'll knock
14 off a little early today, but we'll be back on track
15 tomorrow.

16 John, are you a Canon or a Nikon?

17 JUROR CEARLEY: It depends on what level
18 you're talking about. Entry level I'm Nikon. Moving up
19 the line, I switch over to Canon.

20 THE COURT: Rats. I'm just opposite, so
21 anyway...

22 Okay. Tom, you ready?

23 MR. MELSHEIMER: May it please the Court,
24 Your Honor. At this time we call a former Janssen
25 employee Laurie Snyder.

1 (Video played as follows:)

2 **LAURIE SNYDER,**

3 having been first duly sworn, testified as follows:

4 **DIRECT EXAMINATION**

5 Q. Ms. Snyder, would you please state your full
6 name for the record, please?

7 A. Laurie Preach Snyder.

8 Q. When did you start working for Janssen?

9 A. December of 1991.

10 Q. In that position as PHS&R reimbursement
11 manager, did you have other drugs other than Risperdal
12 you were working?

13 A. No. No.

14 Q. You said something interesting. You said that
15 your primary, I guess, clients or purchaser are public
16 sector payers; is that correct?

17 A. Yes. Yes.

18 Q. Does that make -- is that a different dynamic
19 than you see with other drugs in the -- that Janssen
20 sells?

21 A. Yes.

22 Q. And when did you first learn of the Texas
23 medical -- the TMAP project?

24 A. As a Public Health Systems & Reimbursement
25 manager.

1 Q. Did Janssen in any way support financially the
2 Texas Medication Algorithm Project?

3 A. I can only go by what I know and what I did.
4 So there were unrestricted educational grants given to
5 support the Texas Medication Algorithm Project.

6 Q. You've talked a little bit about, however, that
7 TMAP was something that you tried to export in
8 Pennsylvania; is that right?

9 A. Yes. Yes.

10 Q. And what was that effort known as?

11 A. PennMAP.

12 Q. Exhibit 77 is what?

13 A. "Public Health Systems & Reimbursement Focused
14 on Growing Risperdal Business by Focusing on Risperdal
15 Payers." And this is June of '02.

16 Q. The topic of it is "Focused on Growing
17 Risperdal Business by Focusing on Risperdal Payers,"
18 correct?

19 A. Correct.

20 Q. All right. And will you please read for the
21 jury the mission statement listed on Page 2 of that
22 presentation, Exhibit 77?

23 A. Okay. "Mission Statement," to "Support CNS
24 Sales by proactively working with Public Mental Health
25 Systems to identify, maximize and protect Risperdal

1 sales opportunities."

2 Q. And was that your mission at the time?

3 A. Yes.

4 Q. And on Page 3, please look at the slide. And
5 read that top line to us.

6 A. "Risperdal Total Sales = 85% Public Sector
7 Payers!"

8 Q. That's -- 85 percent public sector payers?

9 A. Right. Seriously mentally ill don't have jobs,
10 so they're not -- they're not like you and I. They're
11 not getting just pure HMO. They don't have insurance.

12 Q. So your customers --

13 A. They have to rely on the government.

14 Q. Under -- your notes underneath, it says,
15 "Atypicals are in the top 5 most expensive drugs in most
16 state Medicaid programs."

17 A. Uh-huh.

18 Q. Was that a true statement of fact at the time?

19 A. I have up here atypicals among the 10 costliest
20 drug categories and then I have the atypicals are in the
21 top five most -- in most state Medicaid programs. I'm
22 not sure where I got it. I would assume at the time I
23 knew what I was talking about.

24 Q. Okay. But needless to say, an atypical
25 antipsychotic medication is an expensive drug in

1 Medicaid programs?

2 A. Yes.

3 Q. This will be 81. Ms. Snyder, did you send this
4 e-mail?

5 A. Yes.

6 Q. "The Janssen PHS&R department has led many
7 medication algorithm initiatives for Risperdal, which
8 have ensured open access within some payers and lead to
9 favorable positioning for Risperdal in others. Janssen
10 needs to remain the leader in this area in order to
11 ensure access to Risperdal."

12 So in looking at this document, it
13 indicates that you believe Janssen to be on the
14 forefront of algorithms in the industry.

15 A. Yes.

16 Q. And you believe that to ensure access to
17 Risperdal, that that needs to -- that leadership from
18 Janssen needs to continue, correct?

19 A. Yes.

20 Q. Okay. Does that look like -- the top three
21 documents, then, in Exhibit 82 you've identified as
22 performance reviews?

23 A. Correct. Correct.

24 Q. Okay. So on the initial one, which is 1504,
25 Yolanda Roman is the one that did the evaluation of you?

1 A. Correct.

2 Q. The handwritten notes on the right, that's
3 Yolanda Roman's writing.

4 A. Correct. Correct.

5 Q. Okay. And these -- on these comments, you
6 listed these as initiatives and -- and things that you
7 had done from the previous year; is that correct?

8 A. Yes.

9 Q. And one of those things that you listed was
10 that you managed TMAP and PennMAP communications via
11 phone conferences to ensure proper planning and
12 execution; is that right?

13 A. Correct.

14 Q. Two lines down it says you persuaded KOLs,
15 which we've said is key opinion leaders, in Pennsylvania
16 to adopt guidelines favorable to Risperdal; is that
17 right?

18 A. Correct.

19 Q. "Goal statement." "Educational Forums:
20 Pennsylvania state OMH program to further establish
21 atypicals as first-line with Risperdal as the standard
22 of care." Was that your goal?

23 A. Yes.

24 Q. And your result seems to indicate that
25 "Algorithm ensuring open/favorable Risperdal access,"

1 correct?

2 A. Yes.

3 Q. And so that was a result of your -- of -- of
4 your work?

5 A. Yes. They -- yes. Not just my work, but I
6 like to think I played a pivotal role.

7 Q. Under the comment section below those columns
8 it says, "Influence KOLs to leverage PHS&R public sector
9 program in order to meet long-term mutual goals - TMAP
10 adoption." You wrote that comment?

11 A. Yes.

12 Q. And was that a -- is that a fair statement of
13 your -- what you felt like your accomplishments were?

14 A. Yes.

15 Q. I'm going to go down to the next column under
16 deliverables. It says "Successful TMAP meeting."

17 A. Okay. Where are you? Okay.

18 Q. "Dialogue" --

19 A. Yes.

20 Q. -- "with key influencers around algorithms."

21 A. Okay.

22 Q. Were those things that you delivered during the
23 prior year?

24 A. Yes.

25 Q. And those are things that you felt like were

1 accomplishments that you wanted to include in your -- in
2 your performance review?

3 A. That was part of my job --

4 Q. Okay.

5 A. -- to talk about algorithms and gain open
6 access, et cetera.

7 Q. Under the comment section it says you took
8 advantage of Steve Shon's schedule and influenced NJAHMA
9 to support TMAP initiative. Did you do that?

10 A. Yes. That was hard to do. He was a pretty
11 busy guy.

12 Q. It was a true statement that Janssen was
13 interested in advancing the schizophrenia algorithm
14 portion of TMAP, correct?

15 A. Yes.

16 Q. And the schizophrenia algorithm portion of
17 TMAP, I believe you've testified, had Risperdal as a
18 first-line therapy, correct?

19 A. Right, with the other atypicals.

20 Q. Right. But Risperdal was a first-line therapy?

21 A. Correct.

22 Q. If you'll take a look at Exhibit 98,
23 Mrs. Snyder. And do you see how midway through the
24 first page it starts with an e-mail from you dated
25 January 11, 2001 to a number of people. Subject:

1 January 10th OMH program follow-up. Do you see that?

2 A. Yes.

3 Q. And that is the January 10th OMH program we
4 were just discussing a few minutes ago, right?

5 A. Correct.

6 Q. And you talk about -- in the first paragraph
7 you say, "Wow!!! The Pennsylvania Public Sector Meeting
8 was a success," correct?

9 A. Correct.

10 Q. Over 95 attendees from all sectors of the state
11 with key representation from inpatient (OMH) and
12 outpatient (Medicaid) settings were present, correct?

13 A. Correct.

14 Q. Does that refresh your memory in terms of how
15 many people were present at the sector meeting?

16 A. Yes.

17 Q. And again, this is the CME on the schizophrenia
18 guidelines, right?

19 A. Right.

20 Q. Do you see in the second sentence you state,
21 "Every goal was focused on Integrating Best Practices
22 for Schizophrenia patients via TMAP and measurement of
23 outcomes based on TMAP implementation." Did I read that
24 correctly?

25 A. Uh-huh.

1 Q. So preceding back through that paragraph, in
2 bold you start to say, "For the first time, the state is
3 taking the initiative to ensure patients have a
4 successful trial on atypicals. This can have a large
5 impact on your business since there is still a large
6 amount of conventional usage in the state system." Is
7 that true?

8 A. Correct.

9 Q. Okay. You say "large impact on your business."
10 Whose business are you talking about?

11 A. CNS Sales.

12 Q. Okay. And they sell Risperdal, right?

13 A. Yes.

14 Q. Okay. And when you -- what did you say about
15 what Dr. Shon did at this January 10th event?

16 A. Do I need to read it?

17 Q. Uh-huh.

18 A. "Steve Shon, MD drove home the idea that
19 algorithms make both clinical and administrative sense.
20 He did a great job of explaining the basics of TMAP.
21 Key influencers in the state are now seeking further
22 information and many are trying to 'own' TMAP within
23 their own system."

24 Q. And those were your words, correct?

25 A. Yes.

1 Q. And they were true at the time, as far as you
2 know?

3 A. Yes.

4 Q. Can you read the first two sentences of that
5 photograph?

6 A. "Overall, we have a major opportunity in
7 Pennsylvania state hospitals and within Medicaid managed
8 care. Both of those payers are looking to Janssen to
9 assist them in creating algorithms."

10 Q. Was that true that both of those payers were
11 looking to Janssen to assist them in creating
12 algorithms?

13 A. Yes.

14 Q. Okay. Did you actually assist them in creating
15 algorithms?

16 A. Again, I only brought the people that knew
17 about algorithms together. I was not the algorithm
18 expert.

19 Q. So are you saying you didn't help them create
20 them?

21 A. No. Just -- just saying the assistance is
22 really by bringing the people together, not creating
23 them.

24 Q. "The people" meaning like Dr. Shon --

25 A. Correct, yes.

1 Q. -- and the state representative?

2 A. Right.

3 Q. Okay. Exhibit 101 is another e-mail chain,
4 right?

5 A. Yes, it is.

6 Q. Okay. If you can just read the first
7 paragraph.

8 A. "What a week?" "What a week! Last week we had
9 well over 250+ key people attend the three Janssen
10 sponsored TMAP programs in Pennsylvania (estimated total
11 cost" of 5 to 6K). "We had mostly staff psychiatrists
12 from the state hospitals; medical directors,
13 administrators, advocacy and others attended from not
14 only the state hospital system, but also the community.
15 More importantly, our competition has missed this moving
16 train!"

17 Q. What did you mean when you said "Our
18 compensation has missed this moving train"?

19 A. As I had mentioned before, they did not have a
20 Public Health Systems & Reimbursement team and
21 they're -- they really were not aware of Texas
22 Medication Algorithm Project as much, or if they were,
23 they weren't doing anything about it.

24 (Video stopped)

25 MR. MELSHEIMER: That concludes our offer,

1 Your Honor.

2 MR. McCONNICO: Your Honor, for this
3 deposition, Johnson & Johnson has no offer.

4 MR. MELSHEIMER: May it please the Court.
5 At this time, Your Honor, we call by video deposition
6 Dr. Susan Stone.

7 MR. McCONNICO: If we could approach real
8 quick.

9 *(Discussion at the bench as follows:)*

10 MR. McCONNICO: This is the one that we
11 had objections to, in summary the objections. She talks
12 a lot about the depression algorithm.

13 MR. SWEETEN: Steve, we did that.

14 MR. McCONNICO: Okay. I did not know
15 that. I apologize.

16 *(Video played as follows:)*

17 **SUSAN STONE, M.D.**

18 having been first duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 Q. Please state your full name for the record.

21 A. Susan Anne Stone.

22 Q. And it's Dr. Stone, correct?

23 A. Yes.

24 Q. Do you understand that the plaintiffs in this
25 lawsuit have identified you as a -- as a person having

1 knowledge of the allegations in the lawsuit?

2 A. Yes.

3 Q. And -- and what is that knowledge that you
4 possess?

5 A. I worked at the Texas Department of Mental
6 Health and Mental Retardation at the time the Texas
7 Medication Algorithm Project was started.

8 Q. So specifically what is your knowledge with
9 regard to the -- the allegations that Janssen influenced
10 decisions within that department?

11 A. My understanding is that there was some money
12 that changed hands that probably -- that in my opinion
13 probably influenced some decisions.

14 Q. And whose hands did this money -- was this
15 money exchanged through?

16 A. A variety of people to my knowledge.

17 Q. Can you name a few?

18 A. Steve Shon.

19 Q. What is your knowledge to the -- of the extent
20 to which Dr. Shon's decision-making was affected by
21 money given to him by my client?

22 A. I don't know for a fact, but I -- I had some
23 suspicions when I was working at the department.

24 Q. And what were those suspicions?

25 A. It seemed like there were a number of

1 pharmaceutical company executives in the central office
2 at many times.

3 Q. And why did the presence of these
4 pharmaceutical executives lead you to have suspicions
5 about Dr. Shon?

6 A. Well, I -- I know for a fact that
7 pharmaceutical companies use their influence to
8 influence the way medicines are prescribed.

9 Q. And how do you know that?

10 A. Because I'm a doctor.

11 Q. Fair enough. Can you give some specific
12 example of how a pharmaceutical company influenced
13 Dr. Shon while you were working at TDMHMR?

14 A. Well, I think that a lot of Dr. Shon's work was
15 being driven by money that was coming from the
16 pharmaceutical companies.

17 Q. And do you know this based on conversations
18 that you had with Dr. Shon?

19 A. Meetings that I was in. I don't know that I
20 had a specific conversation with him, but I was in a
21 number of meetings where that was mentioned.

22 Q. I'm sorry, where what was mentioned?

23 A. The influence -- using pharmaceutical money to
24 fund the -- the projects that they were working on.

25 Q. And among these projects is the -- what you

1 mentioned earlier, the Texas Medication Algorithm
2 Project; is that correct?

3 A. Yes.

4 Q. Can you identify a specific decision that was
5 made with respect to TMAP by Dr. Shon that was
6 influenced by a pharmaceutical company?

7 A. I think a number of decisions made by a number
8 of people in the -- regarding the Texas Medicaid --
9 Medication Algorithm Program were -- were made based --
10 the program itself was developed through the use of
11 pharmaceutical company money.

12 Q. You referred to a number of people in addition
13 to Dr. Shon. Can you name any of these other people?

14 A. Lynn Crismon, I believe, John Rush. I don't
15 recall the others right offhand.

16 Q. And you also made a reference to pharmaceutical
17 executives being in the central office earlier; is that
18 right?

19 A. Right.

20 Q. Can you identify the companies who employed
21 these executives?

22 A. Well, I know that Eli Lilly and Janssen were
23 both there at certain times.

24 Q. What was Dr. Shon's role with respect to TMAP?

25 A. He was the director of the project.

1 Q. And what does that mean?

2 A. It means that he was the one that was in charge
3 of that project at the Texas Department of Mental Health
4 and Mental Retardation.

5 Q. And so what specific responsibilities did he
6 have with respect to TMAP as the director?

7 A. I think he was driving the process.

8 Q. How long did you work on TMAP?

9 A. I -- I was involved in the initial planning
10 meeting for TMAP and I went to a steering committee
11 meeting, and then I wasn't really involved very much
12 after that, so, you know, I don't know -- I don't know
13 the exact dates.

14 Q. Okay. Do you recall the dates at which you
15 worked at TDMHMR generally?

16 A. Yes. I think I worked there from 1994 to 1997.

17 Q. And if you could, just give me kind of a
18 summary of your -- of your education from that point
19 forward, college, medical school, law school.

20 A. Sure. I graduated from the University of Texas
21 at Austin with a bachelor's degree with honors in
22 history. That was in 1982. I graduated from the
23 University of Texas Law School in 1985, and I've been a
24 member of the State Bar of Texas since 1986. I
25 graduated from the University of Texas Medical School in

1 Houston in 1990. I've been licensed to practice
2 medicine since then. I completed my psychiatric
3 residency in 1994, also at UT Houston. And I'm board
4 certified in both general and forensic psychiatry.

5 Q. After your residency, where did you go to work?

6 A. Texas Department of Mental Health and Mental
7 Retardation.

8 Q. And that was in 1994?

9 A. I believe so.

10 Q. And how long did you remain at that department?

11 A. I left in 1997.

12 Q. And after you left TDMHMR, where did you go to
13 work?

14 A. I went in private practice.

15 Q. But as far as treating patients, is it
16 exclusively for psychiatric conditions?

17 A. Yes.

18 Q. Do you treat Medicaid patients?

19 A. Yes.

20 Q. Do you treat children?

21 A. Yes.

22 Q. What kind of consulting work have you done
23 during the period between the time that you left TDMHMR
24 and today?

25 A. Oh, I've done a lot. I've worked with -- I

1 mostly worked with communities, kind of dealing with
2 issues that interface between law and mental health.
3 So, for example, I worked with Harris County on the
4 Mental Health Criminal Justice Task Force where we
5 developed a specialized police response to individuals
6 with behavioral health disorders, worked for -- on the
7 judicial task force that worked with judges around
8 issues related to mental health issues, worked with
9 juvenile justice departments. So I've done a number of
10 different things.

11 Q. Now, getting back to your employment at TDMHMR,
12 what was your initial position there when you joined
13 them in 1994?

14 A. They called me a medical specialist.

15 Q. And who did you report to in this capacity?

16 A. Steve Shon.

17 Q. And what was your next position within TDMHMR?

18 A. Associate medical director.

19 Q. And what were your job responsibilities as
20 associate medical director?

21 A. Pretty much to do whatever Steve Shon asked me
22 to do.

23 Q. Did Steve Shon ever ask you to do something
24 that you weren't comfortable doing?

25 A. Yes.

1 Q. What was that?

2 A. Well, there were a number of things, so I
3 probably couldn't list them all, but there were, yeah.

4 Q. Give me one example.

5 A. Probably the work on the TMAP would be --

6 Q. Okay.

7 A. -- the best example I could give you.

8 Q. You said that one of the reasons why you left
9 TDMHMR was that you were uncomfortable with the
10 direction of TMAP, correct?

11 A. Correct.

12 Q. Are there any other reasons why you left
13 TDMHMR?

14 A. I didn't particularly like working for Steve
15 Shon.

16 Q. And what didn't you like about working for him?

17 A. He -- he would tend to be inconsistent, over --
18 overly delegated, didn't always take responsibility for
19 things that were his decisions, not always exactly
20 honest.

21 Q. So inconsistent, delegated too much, didn't
22 take responsibility and wasn't always honest?

23 A. I could probably add impulsive to the list.

24 Q. And what do you mean that he was impulsive?

25 A. He would make kind of snap decisions based on

1 little fact.

2 Q. Getting back to TMAP, whose idea was TMAP?

3 A. You know, I'd have to say in my opinion it was
4 John Rush's idea.

5 Q. I'm going to hand you a document that may
6 refresh your recollection. This is a new exhibit so
7 we're going to mark it as 2615. Can you identify this
8 document for me?

9 A. It looks like a letter to me from Don Gilbert.

10 Q. Okay. And the date of the letter is June 11th,
11 1996, correct?

12 A. Correct.

13 Q. Do you believe that this represents the first
14 time you were invited to participate on TMAP?

15 A. No, I don't believe so, because I believe this
16 letter was after the initial meeting in Dallas.

17 Q. And who invited you to that initial meeting?

18 A. Steve Shon.

19 Q. Why did you accept Dr. Shon's invitation to the
20 meeting?

21 A. Because he was my boss.

22 Q. When you attended this first meeting, how much
23 work had already been done on TMAP?

24 A. I don't know for a fact, but it was a pretty
25 well formed idea by the time this first meeting

1 happened.

2 Q. And what do you mean by pretty well formed?

3 A. It seemed like rather than -- rather than it
4 being a participatory meeting, that it was more of a
5 this is what we're doing meeting from Steve and John.

6 Q. You do recall attending the consensus
7 conference in Houston, though, correct?

8 A. I do.

9 Q. And again, that made you uncomfortable because
10 you knew that pharmaceutical companies tended to attempt
11 to influence decision-making --

12 A. Yes.

13 Q. -- correct?

14 A. Correct.

15 Q. Do you know if pharmaceutical companies
16 contributed to TMAP?

17 A. I don't know -- well, yes, I do know actually.

18 Q. And how do you know that?

19 A. Well, as I said, it was mentioned in the first
20 steering committee meeting.

21 Q. Now, getting into the TMAP algorithm
22 specifically, are they a mandate to a physician to
23 prescribe a particular drug?

24 A. I think it's a relative mandate.

25 Q. What do you mean by relative mandate?

1 A. Well, I think the -- the expectation was that
2 the -- that the doctors would prescribe the medications
3 in order -- in the order that the algorithm dictated.

4 Q. Now, you say that the state monitors
5 compliance; is that correct?

6 A. Yes.

7 Q. Do you think that Dr. Shon enjoyed the
8 notoriety he was getting about TMAP?

9 A. Oh, yes.

10 Q. Do you think becoming a famous doctor was his
11 primary motivation in developing TMAP?

12 A. I don't know.

13 Q. Do you think it was one of the motives?

14 A. Yes.

15 Q. Do you recall the specific Janssen sales
16 representatives who called on you?

17 A. No. They just pounce on you, so you don't get
18 any -- any warning.

19 Q. And what do you mean by pounce?

20 A. They come in unexpectedly and uninvited.

21 Q. Did you ever witness any communications between
22 anyone from Janssen and Johnson & Johnson and Steven
23 Shon?

24 A. I'm sure I did.

25 Q. Do you know approximately when this might have

1 occurred?

2 A. Sometime late '96 probably.

3 Q. And where would these communications have taken
4 place?

5 A. Usually up in the executive suite of central
6 office.

7 Q. Did you ever witness any communications between
8 anyone from Janssen and Johnson & Johnson and anyone
9 else besides Dr. Shon and TDMHMR?

10 A. Probably.

11 Q. What about who from TDMHMR?

12 A. Again, there were a number of people sort of
13 involved, so I seem to recall Don Gilbert perhaps
14 meeting with some of them. But I don't know which ones,
15 you know, again, who the Johnson & Johnson person was.

16 Q. And were these face-to-face meetings or
17 telephone conversations?

18 A. Probably both.

19 Q. And again, even though -- even though you can't
20 provide a specific example, what makes you feel that
21 those probably occurred?

22 A. Well, sort of in looking at the documents as
23 they rolled out -- I mean, I think I just -- I think it
24 was kind of common knowledge in the -- in the department
25 that there were pharmaceutical companies involved.

1 Q. Now, getting in specifically to the discomfort
2 that you had with TMAP, you mentioned pharmaceutical
3 company funding as being one reason for that discomfort,
4 correct?

5 A. Correct.

6 Q. What else made you uncomfortable about TMAP?

7 A. Well, again, we have kind of gone through this,
8 that -- you know, kind of -- based on the assumption
9 that -- that physicians in the community mental health
10 centers and -- and state hospitals are not as -- not as
11 smart or talented or as good clinicians as people at the
12 universities.

13 Q. Okay. But what else?

14 A. Again, the way that the algorithms were
15 developed and not truly a consensus process, sort of
16 an -- you know, all the things I've already testified
17 to. The -- the -- the -- the method, the evaluation,
18 the -- the drug company money and the assumptions.

19 Q. Other than Dr. Shon, did any of the other
20 individuals who were involved with TMAP make you
21 uncomfortable?

22 A. Yeah.

23 Q. Who would that be?

24 A. Well, I think -- again, I think Dr. Rush was --
25 was really trying to make a name for himself and kind of

1 pushing from an academic perspective. I think -- Lynn
2 Crismon I think to some extent was using the evaluation
3 as -- again, as a stepping stone to get -- to get famous
4 and maybe making recommendations that weren't
5 necessarily objective.

6 Q. What made you come to the conclusion that
7 Dr. Shon was motivated by a desire to achieve fame?

8 A. Well, I think just the way things rolled out.
9 Very clearly he was getting a lot of attention and
10 liking it.

11 Q. With respect to atypical antipsychotics versus
12 conventional antipsychotics, do you find as a general
13 matter one category to have a better side effect profile
14 than the other?

15 A. No, I don't.

16 Q. With respect to conventional antipsychotics
17 versus atypical antipsychotics, do you find one category
18 to be more effective than the other?

19 A. No.

20 Q. With respect, specifically, to your children
21 and adolescent patients, have you ever prescribed an
22 atypical antipsychotic to one of them?

23 A. Very -- very unusually.

24 Q. And why is that?

25 A. Because usually kids aren't psychotic.

1 Psychosis is pretty -- pretty rare in children.

2 Q. Have you ever prescribed Risperdal to one of
3 your child and adolescent patients?

4 A. I don't think so.

5 Q. And why don't you think so?

6 A. Because, again, usually children aren't
7 psychotic.

8 Q. So there is conceivably a scenario under which
9 you would feel comfortable prescribing an atypical
10 antipsychotic to a child and adolescent patient?

11 A. I would not feel comfortable doing it, no.

12 Q. Okay. And why is that?

13 A. Because, again, usually kids aren't psychotic
14 and -- and -- and antipsychotic medications have
15 significant side effects.

16 Q. How early can schizophrenia present?

17 A. There is such a thing as childhood
18 schizophrenia, but it's exceedingly rare, very, very
19 rare. And so usually individuals with schizophrenia
20 usually begin to see symptoms showing up at 18 or 19.

21 Q. I'm going to hand you what's been previously
22 marked as Exhibit 686. Do you recognize this letter?

23 A. I do.

24 Q. When -- when had you seen the letter? When was
25 the previous time that you had seen the letter before

1 that?

2 A. I don't remember the exact date, but, you know,
3 I'm a Medicaid provider, so -- but I remember don't
4 remember the exact date.

5 Q. Do you recall receiving this letter?

6 A. I do.

7 Q. Did you discuss the contents of it with anyone?

8 A. No. I mean, I talked to my patients about it.

9 Q. You did?

10 A. Well, yeah. All my patients I talk about risks
11 and benefits and side affects.

12 Q. Okay. Was there anything -- when you read this
13 letter in November of 2003 when you received it, was
14 there anything in the letter that you read and thought
15 that's not right?

16 A. Yes, it's -- it's not consistent with my
17 experience.

18 Q. What specifically in this letter is
19 inconsistent with your experience?

20 A. Hyperglycemia-related adverse events have
21 infrequently been reported. The body of evidence
22 suggests that Risperdal is not associated with an
23 increased risk of diabetes. Evidence also suggests that
24 Risperdal is associated with a lower risk of diabetes
25 than some other studied atypical antipsychotics.

1 Q. Dr. Stone, could you put Exhibit 2617 in front
2 of you that -- that counsel for the drug company just
3 asked you about?

4 A. Yes.

5 Q. Can you read the second -- first of all, what's
6 the date on this e-mail?

7 A. February 6th, 1997.

8 Q. Can you read the second paragraph of this
9 letter?

10 A. "Janssen sent me a package of literature which
11 I would summarize as follows."

12 Q. What does the -- there -- underneath that
13 sentence about Janssen sending you a package of
14 literature, there are three numbers, correct?

15 A. Correct.

16 Q. What do those three numbers do?

17 A. I'm assuming -- I don't remember this, but I'm
18 assuming they outline what Janssen sent me.

19 Q. Let me ask you about number three. Can you
20 read that sentence for us?

21 A. "A very small unpublished study presented at
22 the APA showed a reduction in cost of \$4,045 per patient
23 after starting risperidone. Interestingly, that study
24 showed an increase in cost per patient by \$7,831 after
25 initiation of clozapine. It's way too small a study to

1 mean anything, so I raise it only because they will."

2 Q. Okay. Here you say, "It's way too small a
3 study to mean anything, so I raise it only because they
4 will." Who's the "they"?

5 A. Janssen.

6 Q. Okay. And was that common that -- that during
7 this time period that Janssen would raise the issue of
8 cost with you?

9 A. Yes.

10 Q. Was that also the case with -- would Janssen
11 raise the issue of cost comparisons with state
12 officials --

13 A. I would --

14 Q. -- with whom you worked?

15 A. -- think so, yes.

16 Q. At the time -- in February 6 of 1997 at the
17 time that -- that this was written, on a per pill basis,
18 between the conventional antipsychotics and brand name
19 Risperdal, can you give us a -- sort of a sense for the
20 difference in cost per pill?

21 A. Yeah. At that point in time, you know, you
22 could take a medication like Hal -- haloperidol and it's
23 about \$9 a month as opposed to -- if you're talking
24 about Risperdal, it would be closer to 300.

25 *(Video stopped)*

1 MR. McCONNICO: Your Honor, Johnson &
2 Johnson has portions of this deposition that they will
3 show.

4 *(Video played as follows:)*

5 **CROSS-EXAMINATION**

6 Q. And you also made a reference to pharmaceutical
7 executives being in the central office earlier; is that
8 right?

9 A. Right.

10 Q. Can you identify the specific executives?

11 A. No, I cannot.

12 Q. Did you ever personally witness any
13 interactions between an executive from Janssen and
14 Dr. Shon?

15 A. I'm sure I did.

16 Q. Do you recall the substance of that
17 interaction?

18 A. No.

19 Q. What was Dr. Shon's role with respect to TMAP?

20 A. He was the director of the project.

21 Q. And what does that mean?

22 A. It means that he was the one that was in charge
23 of that project at the Texas Department of Mental Health
24 and Mental Retardation.

25 Q. And so what specific responsibilities did he

1 have with respect to TMAP as the director?

2 A. I think he was driving the process.

3 Q. If you could just elaborate a little bit on
4 what that means, driving the process.

5 A. He was, again, you know, a program director at
6 a state agency. You know, usually they have staff and
7 they tell the staff what to do and -- and -- and work
8 with outside folks about the particular project. So he
9 was the director.

10 Q. And what specific things did he tell his staff
11 to do with respect to TMAP?

12 A. I -- I can't tell you that. I don't know.

13 Q. Okay.

14 A. It's a long time ago.

15 Q. Are there any other reasons why you left
16 TDMHMR?

17 A. I didn't particularly like working for Steve
18 Shon.

19 Q. And what didn't you like about working for him?

20 A. He -- he would tend to be inconsistent, over --
21 overly delegated, didn't always take responsibility for
22 things that were his decisions, not always exactly
23 honest.

24 Q. So inconsistent, delegated too much, didn't
25 take responsibility and wasn't always honest?

1 A. I could probably add impulsive to the list.

2 Q. And what do you mean that he was impulsive?

3 A. He would make kind of snap decisions based on
4 little fact.

5 Q. Can you provide an example of a snap decision
6 that he made?

7 A. Not offhand.

8 Q. Focusing in for a moment on your contention
9 that Dr. Shon wasn't always honest, can you provide a
10 specific example of a time where he was not honest?

11 A. Not off the top of my head.

12 Q. Did you ever report his dishonesty to anyone at
13 TDMHMR?

14 A. I don't think I reported it exactly. I think
15 we discussed it.

16 Q. And who is "we"?

17 A. Fellow staff members.

18 Q. Did you ever witness any communications between
19 anyone from Janssen and Johnson & Johnson and Steven
20 Shon?

21 A. I'm sure I did.

22 Q. And do you recall who from Janssen or Johnson &
23 Johnson it was?

24 A. No.

25 Q. Do you recall approximately how many of these

1 communications you witnessed?

2 A. No.

3 Q. Do you know what information was conveyed to
4 Dr. Shon at this meeting?

5 A. No.

6 Q. Do you know any decision that Dr. Shon made
7 with respect to TMAP based on information he received at
8 that meeting?

9 A. No.

10 Q. Do you know if Dr. Shon refrained from making
11 any decisions with respect to TMAP based on information
12 he received at that meeting?

13 A. I don't know.

14 Q. Did you ever witness any communications between
15 anyone from Janssen and Johnson & Johnson and anyone
16 else besides Dr. Shon and TDMHMR?

17 A. Probably.

18 Q. Who from Janssen and Johnson & Johnson?

19 A. I don't know.

20 Q. And again, even though -- even though you can't
21 provide a specific example, what makes you feel that
22 those probably occurred?

23 A. Well, sort of in looking at the documents as
24 they rolled out -- I mean, I think I just -- I think it
25 was kind of common knowledge in the -- in the department

1 that there were pharmaceutical companies involved.

2 Q. So pharmaceutical companies generally, not just
3 Janssen and Johnson & Johnson?

4 A. No.

5 Q. Dr. Shon also communicated with people from
6 Eli Lilly, for example?

7 A. Yes.

8 Q. Pfizer?

9 A. Probably.

10 Q. And that's a good point because TMAP focused on
11 three different disease states, correct?

12 A. That's right.

13 Q. And that would be schizophrenia, bipolar
14 disorder and major depressive disorder?

15 A. That's my understanding.

16 Q. And you only worked on the major depressive
17 disorder module, correct?

18 A. That's correct.

19 Q. You did no work on the schizophrenia module?

20 A. Not to my memory.

21 Q. No work on the bipolar module?

22 A. Not to my memory.

23 Q. I'm going to hand you what's been previously
24 marked as Exhibit 686. Do you recognize this letter?

25 A. I do.

1 Q. Do you recall receiving this letter?

2 A. I do.

3 Q. And your knowledge of risks, benefits and side
4 effects wouldn't just come from a letter like this, but
5 the whole of scientific knowledge as represented in the
6 medical literature as well as information you've
7 gathered from CMEs?

8 A. That's true.

9 Q. So when you received this letter, did it change
10 your mind about those things?

11 A. In what way?

12 Q. Well, did you -- did you say, "Well, forget
13 what my knowledge and experience tells me before I
14 received this letter. This letter says,
15 'Hyperglycemia-related adverse events have been
16 infrequently reported in patients receiving Risperdal'
17 so now that's my knowledge"?

18 A. No.

19 Q. You viewed everything that was stated in this
20 letter in light of the knowledge you had acquired
21 through your own understanding of the medical
22 literature?

23 A. Yes.

24 Q. Did you change your prescribing habits in
25 response to this letter?

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

2 Q. Did you continue to prescribe Risperdal after
3 you received this letter?

4 A. Probably.

5 Q. Did you prescribe it more frequently after you
6 received this letter?

7 A. Probably not.

8 Q. One last question. Do you ever recall
9 discussing this letter with any sales representative
10 from Janssen or Johnson & Johnson?

11 A. No, I don't recall that.

12 Q. Do you prefer one type of antipsychotic over
13 another?

14 A. No. Just depends on the patient.

15 Q. Among the various drugs that comprise the class
16 of atypical antipsychotics, do you have a preference for
17 a specific drug?

18 A. No.

19 Q. And why is that?

20 A. Well, again, it kind of depends on -- you know,
21 you kind of weigh the risks and benefits and side effect
22 profiles of various medications, and you look at what
23 people have responded to in the past, a number of
24 different factors.

25 Q. Have you ever prescribed Risperdal to one of

1 your patients?

2 A. Yes.

3 Q. Have you ever prescribed Risperdal to a
4 Medicaid patient?

5 A. I don't recall one way or the other. Probably.

6 Q. With respect specifically to your -- to your
7 children and adolescent patients, have you ever
8 prescribed an atypical antipsychotic to one of them?

9 A. Very -- very unusually.

10 Q. And why is that?

11 A. Because usually kids aren't psychotic.
12 Psychosis is pretty -- pretty rare in children.

13 Q. So is it fair to say that it would also be
14 unusual for you to prescribe a conventional
15 antipsychotic --

16 A. Yes.

17 Q. -- to a child?

18 A. Yes.

19 Q. And I apologize if this wasn't clear earlier,
20 but -- but sitting here today, do you still prescribe
21 Risperdal?

22 A. Yeah, probably.

23 Q. Do you still prescribe generic risperidone?

24 A. Probably.

25 Q. I want to look at this document very briefly,

1 and it has not been previously marked. I will mark it
2 as 2617. And this will be the last document we get to
3 today. Can you identify this document for us?

4 A. It's an e-mail that I sent on February 6, 1997.

5 Q. If you could just read that first paragraph,
6 that one-sentence paragraph at the beginning.

7 A. "As promised, I'm trying to hunt down some
8 better data for Don Gilbert re cost-savings connected
9 with atypical antipsychotics."

10 Q. And if you could just skip down below your
11 summaries with the paragraph that begins "Another useful
12 tidbit." Do you see that?

13 A. Uh-huh.

14 Q. Could you read that, please?

15 A. Sure. "Another useful tidbit published in the
16 *New England Journal of Medicine* was a study that
17 documented that Medicaid's three drug limit in
18 New Hampshire resulted in an increase in mental
19 health care costs of \$1530 per patient. This exceeded
20 the savings in drug costs to Medicaid by a factor of 17!
21 This" -- "This was a very well-done study in a very
22 reputable journal, and I think it could be very useful
23 in arguing that front-end money saves money in mental
24 health care."

25 Q. So in other words, restricting drug costs on

1 the front end doesn't necessarily result in healthcare
2 savings to Medicaid on the back end?

3 A. Right.

4 Q. In fact, restricting drug costs on the front
5 end can actually increase healthcare costs on the back
6 end, right?

7 A. Right. That's what it says.

8 Q. And then doing the opposite, I guess, spending
9 front-end money on drug costs, it could actually result
10 in healthcare cost savings on the back end?

11 A. That's what this says.

12 *(Video stopped)*

13 MR. McCONNICO: Your Honor, that is the
14 end of our tender.

15 MR. MELSHEIMER: May it please the Court.
16 Your Honor, at this time we'd like to publish Exhibit 48
17 to the jury.

18 THE COURT: Okay.

19 MR. MELSHEIMER: Plaintiffs' Exhibit 48 is
20 an e-mail from Rob Kraner at Janssen U.S. dated Tuesday,
21 July 3rd, 2001 at 6:56 p.m. It's sent to James Thornton
22 at Janssen U.S. and Laurie Snyder at Janssen U.S. It is
23 cc'd to Evelyn Grasso-Sirface at Janssen U.S. And the
24 re line is TMAP. "See responses below," which is a
25 forwarded e-mail, original message from James Thornton,

1 Janssen U.S., sent Tuesday, July 3rd, 2001 at 4:22 p.m.
2 to Laurie Snyder at Janssen U.S., Rob Kraner at Janssen
3 U.S. The subject is TMAP.

4 "Laurie and Rob: I need your help. I am
5 getting fairly deep in the TMAP here in KY and several
6 things have arisen. Evelyn wanted me to get in touch
7 with you to get insights. The real issue is funding.
8 The people here want a \$200,000 grant from us. That
9 request precipitates several questions.

10 "1, How did your states approach funding
11 and where did they get it?

12 Texas received funding from all Pharm Co's
13 and RWJ. Several million dollars were raised - most
14 from RWJ.

15 "2, How much, that is, how much money, did
16 we give or are we giving, over what length of time,
17 et cetera?

18 "For TMAP, not sure on the exact amount,
19 but it was in the hundreds of thousands of dollars.
20 This brings up an interesting point. One of the reasons
21 Janssen committed substantial funding for TMAP was to
22 develop a treatment guideline/algorithm for
23 schizophrenia that positioned atypicals as first line
24 agents (at the time, atypicals were usually positioned
25 after conventionals) and test it in real world setting.

1 The rationale was to develop this approach in Texas,
2 find out the most effective way to roll it out, and then
3 other states could replicate TMAP with minimal
4 investment. For whatever reason, states feel they need
5 to 'reinvent the wheel' when it comes to guidelines.
6 Many times this is not needed.

7 "3, If we gave money, was it brand?

8 "Yes, mainly from brand, PHSR also gave
9 some funding.

10 "4, Can this initiative qualify for the
11 RWJ money?

12 "Not sure. It's worth trying. Inquiries
13 should be generated by Kentucky, not Janssen.

14 Rob, I know we had a cursory discussion
15 sometime back, but this account is convinced we gave
16 Texas lots of dollars and wants the same. I will be
17 happy to call you at your convenience to discuss this
18 request.

19 "Also, on another note, a hospital and
20 CMHC system in MS is very interested and Rob" said "this
21 is the one I talked with Dr. Shon about. A new medical
22 director has taken over, is interested, but says he
23 knows very little about algorithms. He wants to talk to
24 someone," someones, "about development and impact: read
25 dollars. I suggested a person from each of your areas

1 since these are so successful. If this linkage is
2 possible, can you supply me with a reference? I can
3 make the preliminary calls. Lynn Crismon would be a
4 good person to speak with. His e-mail is
5 crismon1@mail.utexas.edu. I appreciate any help you can
6 give me. JST."

7 That's Plaintiffs' Exhibit 48.

8 Your Honor, at this time we would call by
9 video deposition -- we would call by deposition an
10 adverse witness, Mr. Schroeder with the Robert Wood
11 Johnson, RWJ, Foundation. And there's an evidentiary
12 issue we need to address with the Court.

13 THE COURT: Ladies and gentlemen, let's
14 take a break. Be back in ten minutes.

15 *(Recess taken)*

16 *(Jury present)*

17 THE COURT: Yes.

18 MR. MELSHEIMER: May it please the Court.
19 Your Honor, we're going to call by --

20 THE COURT: Everybody relax.

21 MR. MELSHEIMER: We're going to call by
22 video deposition a representative of the Robert Wood
23 Johnson Foundation, Mr. Stephen Schroeder. And I'd like
24 to just announce to the jury that the parties have
25 stipulated that a large majority of the holdings of the

1 Robert Wood Johnson Foundation are Johnson & Johnson
2 company stock.

3 (Video played as follows:)

4 **STEPHEN SCHROEDER,**

5 having been first duly sworn, testified as follows by
6 videotaped deposition:

7 **DIRECT EXAMINATION**

8 Q. Now, at some point, is it accurate to say that
9 in addition to being the president of the Robert Wood
10 Johnson Foundation, you also became the CEO of the
11 Robert Wood Johnson Foundation?

12 A. That is correct.

13 Q. Would you agree the Robert Wood Johnson
14 Foundation is a leader among healthcare foundations
15 nationally?

16 A. Yes, I would.

17 Q. In your experience, if the Robert Wood Johnson
18 Foundation decides to fund a project, does that
19 influence whether other foundations will also decide to
20 support that project?

21 A. Sometimes.

22 Q. Encourage people to fund?

23 A. Because it's like a *Good Housekeeping* label.

24 Q. How do you mean that?

25 A. People feel that if Robert Johnson has funded

1 it, they've done the kind of due diligence that means
2 it's -- it's a good program.

3 Q. So you think the Robert Wood Johnson Foundation
4 is synonymous with good due diligence?

5 A. In some people's minds.

6 Q. Is it in your mind?

7 A. Generally, yeah.

8 Q. Okay. When you say it was atypical because it
9 was more clinical than most of your projects, what do
10 you mean by that?

11 A. Our projects generally didn't get into clinical
12 conditions, treatment of diabetes, treatment of
13 hypertension, treatment of asthma, those kinds of
14 things.

15 Q. Why did you make an exception in this case?

16 A. I just thought the upside was really -- really
17 large.

18 Q. Know of another instance in which the Robert
19 Wood Johnson Foundation has funded an algorithm project?

20 A. No.

21 Q. Doctor, I'm going to show you what's been
22 marked as Exhibit 164. This appears on its surface to
23 be a letter from Ken Altschuler at the University of
24 Texas Southwestern Medical Center to Richard Reynolds,
25 executive vice president of the Robert Wood Johnson

1 Foundation. Do you agree with that?

2 A. Yes.

3 Q. And it is dated November 19th, 1996. Can you
4 read for me the first sentence of the letter?

5 A. "I'm enclosing a proposal for our Texas Medical
6 Algorithm Project about which we'll be meeting on
7 December 19th."

8 Q. And then in the next paragraph, do you see it
9 says, "Don Gilbert, Drs. Steve Shon and John" -- "John
10 Rush, Ms. Cindy Hopkins, a representative of Texas
11 consumer groups, and I are looking forward to the chance
12 to meet with you, and we very much appreciate your
13 interest"?

14 A. Uh-huh.

15 Q. Did the Robert Wood Johnson Foundation do any
16 due diligence into the medical healthcare professionals'
17 motives who were involved with the TMAP?

18 A. Into their motives?

19 Q. Yes.

20 A. As far as I know, it was just a normal are they
21 capable of doing this, do they have a track record of
22 doing this, are they expert in doing this. Did we look
23 into their hearts to find why they did it? No.

24 Q. Did you look into whether they had any
25 connections with pharmaceutical companies?

1 A. No.

2 Q. Did you look into whether they had had --
3 received funding for their own purposes from
4 pharmaceutical companies?

5 A. No.

6 Q. Did you look into whether the pharmaceutical
7 companies had been funding them to fly all over the
8 country?

9 A. No.

10 Q. Did you look into whether pharmaceutical
11 companies had been offering them grants and honorarium
12 to give speeches?

13 A. No.

14 Q. During the entire time you were either the
15 president or the CEO of the Robert Wood Johnson
16 Foundation, did Johnson & Johnson equities constitute
17 the single largest asset of the Foundation?

18 A. Yes.

19 Q. During your tenure, was a Robert E. Campbell a
20 member of the Robert Wood Johnson Foundation board of
21 trustees?

22 A. Yes, and he was chairman of that board for
23 some time.

24 Q. And do you recall when his tenure --
25 approximately when he was -- he was on the board?

1 A. I would think from 1995 or so, and he still is
2 on the board.

3 Q. Okay. So for approximately a ten-year period,
4 correct?

5 A. Yes, sir.

6 Q. Now, Mr. Campbell is a retired vice chairman of
7 the board of directors of Johnson & Johnson; is that
8 accurate?

9 A. That's correct.

10 Q. Okay. Also during your tenure, was there a
11 George S. Frazza on the board?

12 A. I believe he still is on the board.

13 Q. And can you tell us sort of his tenure on the
14 Robert Wood Johnson Foundation board?

15 A. I think he came on the board probably in the
16 late '90s and he's still on.

17 Q. He previously served Johnson & Johnson for more
18 than 30 years in the role of corporate secretary,
19 vice president and general counsel; is that accurate?

20 A. I think that's accurate.

21 Q. He remains on the board?

22 A. Yes, sir.

23 Q. Edward Hartnett, do you recall, was he a board
24 member during your tenure?

25 A. Yes. He came in about the same time that

1 Frazza did.

2 Q. Okay. And Mr. Hartnett, what was his tenure
3 approximately on the board?

4 A. He's still on the board.

5 Q. And it's my understanding that he's a retired
6 company group chairman of Johnson & Johnson responsible
7 for Ethicon Inc. and other international affiliates; is
8 that accurate?

9 A. That's accurate.

10 Q. Now, you talked about the Foundation. Is it
11 the -- is the Robert Wood Johnson Foundation the largest
12 foundation in the United States related to healthcare
13 and promoting healthcare concerns?

14 A. It depends how you count Gates.

15 Q. Okay.

16 A. After Gates it certainly is. And Gates is
17 mostly overseas.

18 Q. So it's either the Robert Wood Johnson
19 Foundation or the Bill and Melinda Gates Foundation are
20 the two largest healthcare foundations in this country;
21 is that right?

22 A. That's correct.

23 Q. During your tenure as the president and CEO of
24 the Foundation, would it have been improper had the
25 Robert Wood Johnson Foundation funded projects that --

1 that were Johnson & Johnson marketing efforts?

2 A. Define improper for me.

3 Q. Well, improper pursuant to the culture that you
4 think existed in the Foundation or with respect to your
5 mission.

6 A. I would have thought it was imprudent.

7 Q. Other than imprudent, would you say it was an
8 improper activity by the Foundation?

9 A. I could conceive of circumstances where you
10 could construe it to be of help.

11 Q. To fund a drug company marketing campaign?

12 A. A provisional campaign, not a -- not a
13 marketing campaign.

14 Q. It says, "For example, notes Schroeder, it
15 was," quote, "probably not a good idea," end of quote,
16 "for Dr. Shon (Project Director for Grant ID# 38900) to
17 let the pharmaceutical company pay for his travel
18 speaking engagement."

19 Why do you think that was not a good idea?

20 A. Well, it happens all the time. That is, most
21 academics actually take money from the pharmaceutical
22 industry for speaking and for travel and dinners and
23 things like that, but on balance, it raises questions of
24 objectivity.

25 Q. And here it talks about Dr. Shon, "Pay for his

1 travel/speaking engagement" in the singular. Do you
2 have any information as to how often Dr. Shon -- or a
3 pharmaceutical company paid for Dr. Shon to travel
4 throughout this country regarding that issue?

5 A. I saw some evidence of it in the guidelines or
6 in the documents that were given to me last week or a
7 couple weeks ago. Up until then, I had no knowledge.
8 And I gather it was more than once.

9 Q. So subsequent to this interview, the
10 information you've reviewed indicates to you that Dr. --
11 this was more than one occasion?

12 A. Yes.

13 Q. And obviously, if you thought one occasion was
14 improper, multiple trips funded by the pharmaceutical
15 company for Dr. Shon you believe to be highly improper,
16 correct?

17 A. What I read was probably not a good idea, and
18 I'll stand by that.

19 Q. If you had been told that TMAP was a drug
20 company marketing effort, would that have changed your
21 calculus as to whether or not that was something the
22 Foundation should fund?

23 A. It might have.

24 *(Video stopped)*

25 MR. McCONNICO: Your Honor, the defendant

1 Johnson & Johnson will now offer portions of this
2 deposition.

3 (Video played as follows:)

4 **CROSS-EXAMINATION**

5 Q. All right. Good morning, Dr. Schroeder. How
6 are you?

7 A. I'm fine, thanks.

8 Q. What year did you start working for the Robert
9 Wood Johnson Foundation?

10 A. In July 2000 -- excuse me. July 1990.

11 Q. What position were you originally hired for?

12 A. President.

13 Q. Would you agree the Robert Wood Johnson
14 Foundation is a leader among healthcare foundations
15 nationally?

16 A. Yes, I would.

17 Q. Why would you say that?

18 A. It's the largest. It has an excellent
19 reputation and was recently named as one of the --
20 having one of the 12 most important philanthropic
21 programs of the last century.

22 Q. Now, towards the end you say here, going back
23 to Exhibit No. 170, in the second to the last sentence
24 on question one you say, "There is absolutely no truth
25 to the idea that TMAP was an attempt to drum up business

1 for Johnson & Johnson and therefore inflate" Robert Wood
2 Johnson Foundation "holdings." What's your basis for
3 stating that?

4 A. I think I read the article in the *Times*.

5 Q. Do you have any other basis?

6 A. For why I answered that or why I stated it?

7 Q. Why you stated that.

8 A. Because it's true.

9 Q. How do you know it's true? Have you talked
10 with anybody at the Robert -- at Johnson & Johnson about
11 this project?

12 A. That's the point. I never got any contact with
13 anybody from Johnson & Johnson on this. There was no
14 communication. As far as I knew, they weren't conscious
15 that there was this project here.

16 Q. Okay.

17 A. So I had absolutely no pressure.

18 Q. Did the Robert Wood Johnson Foundation do any
19 due diligence into the medical healthcare professionals'
20 motives who were involved with the TMAP?

21 A. Into their motives?

22 Q. Yes.

23 A. As far as I know, it was just a normal are they
24 capable of doing this, do they have a track record doing
25 this, are they an expert in doing this. Did we look

1 into their hearts to find why they did it? No.

2 Q. If you had been told that TMAP was a drug
3 company marketing effort, would that have changed your
4 calculus as to whether or not that was something the
5 Foundation should fund?

6 A. It might have.

7 Q. Is there any question in your mind that it
8 would have changed your calculus?

9 A. Well, let's talk about penicillin and people
10 dying from things, and a result of our grant, which
11 helped to do the marketing of penicillin, saved one
12 million lives. I wouldn't think that was a bad thing.

13 Q. And I know you answered it earlier, but could
14 you again explain the vision that was presented to you
15 for the reason that you agreed to hear about their and
16 accept their proposal?

17 A. The vision was that they had guidelines and
18 programs that could improve the very poor previous
19 record of diagnosing and treating people with chronic
20 mental illness, especially those in a state Medicaid
21 program, and this would test that algorithm in the state
22 of Texas with implications for national application.

23 Q. -- at the Foundation. At any time during
24 that -- related to the awarding or granting of any of
25 these three -- three grant project numbers, did the --

1 were you aware of or knew that -- knew the drugs that
2 were listed in the TMAP algorithm -- in the algorithms?

3 A. I was not, no.

4 Q. Was that ever part of the Foundation's thought
5 process, to your knowledge, in granting or denying
6 these?

7 A. The specific -- the -- the specific drugs at
8 various stages of the algorithm?

9 Q. Yes.

10 A. Not to my knowledge.

11 Q. What was the -- the Foundation's basis for
12 funding these projects?

13 A. That it had been vetted with peer-reviewed
14 studies that was -- it had multiple sources of funding,
15 very credible scientists at one of the premier academic
16 centers felt that this would make a difference, that the
17 early -- early results had been promising.

18 Q. And -- and it fit within your goals and mission
19 of the Foundation?

20 A. The upside was, I thought, very substantial.

21 *(Video stopped)*

22 MR. McCONNICO: Your Honor, that is the
23 end of Johnson & Johnson's tender of this deposition.

24 MR. MELSHEIMER: Your Honor, at this time
25 plaintiffs call as an adverse witness an employee of

1 Janssen, Mr. Percy Coard.

2 (Video played as follows:)

3 **DIRECT EXAMINATION**

4 Q. Would you tell us your name, please, sir.

5 A. Pearsall Coard, II.

6 Q. So you went to work for Janssen in about what
7 year?

8 A. 1996.

9 Q. Then when did you first have any
10 responsibilities at Janssen that had to do with the drug
11 Risperdal?

12 A. Sir, that would have been when I was a hospital
13 representative in March of 1998 or thereafter.

14 Q. Your resume indicates that you did that job as
15 the job of a district manager covering Houston,
16 including San Antonio, for about three years, March
17 of '99 to March of '02. Does that seem right to you?

18 A. Yes, sir.

19 Q. When you completed your work as district
20 manager, what was your next job?

21 A. I was promoted to Public Health Systems &
22 Reimbursement manager.

23 Q. Getting back to Page 726 in Exhibit 1803, this
24 memorandum from Nancy Bursch-Smith to you about your
25 work session recap, still under the heading of

1 "Influencing," the next statement after the one I just
2 read reads as follows: "At your top accounts (TDMHMR,
3 top 5 MHMRs, state hospitals, et cetera) seek out
4 additional individuals within the system to assess their
5 importance to the system as well as roles and
6 responsibilities. Developing relationships with all
7 levels within a key account is necessary to be
8 successful in this position."

9 First of all, did I read that right?

10 A. Yes, sir.

11 Q. Did you understand this was among the
12 activities you were supposed to be engaging in in
13 connection with the part of your job relating --
14 relating to your role in influencing others?

15 A. Yes, sir.

16 Q. And -- and were there key opinion leaders with
17 whom you dealt that had to do with any of the accounts
18 that we've talked about?

19 A. Yes, sir.

20 Q. Who were the ones you recall as you sit here
21 today?

22 A. From Texas Department of Mental Health and
23 Mental Retardation was Steve Shon. The -- and I'm
24 drawing a blank on specific names as relates to the
25 accounts, but general -- from a title standpoint,

1 generally speaking they would have been the medical
2 directors at the MHMRs and the state hospitals, the
3 pharmacy directors within those entities. As relates to
4 Texas Medicaid, that would have been Leslie Harper,
5 Martha McNeill. As it relates to the prison system, I
6 don't recall the specific titles of those individuals,
7 but it would have been the individuals in Huntsville.

8 Q. Of the individuals you've just mentioned,
9 whether you mentioned them by name or by function, which
10 ones would you say you were in most frequent
11 communication?

12 A. Probably Steve Shon.

13 Q. All right.

14 A. I saw him more than any of the other
15 individuals. And those were -- when I -- when I met
16 with them, it was on a regular basis, I would say.

17 Q. Were there particularly influential people
18 relating to TMAP with whom you would communicate from
19 time to time?

20 A. Yes, sir.

21 Q. And would Dr. Shon be one of those?

22 A. Yes, sir.

23 Q. From time to time you would see Dr. Crismon, if
24 I've understood you; is that right?

25 A. Yes, sir.

1 Q. And also Dr. Alec Miller?

2 A. Yes, sir.

3 Q. Would you consider all those to fall under the
4 heading of key opinion leaders as far as TMAP is
5 concerned?

6 A. Yes, sir.

7 Q. Can you tell us what Exhibit 1813 is?

8 A. The first page looks like an e-mail that I
9 forwarded out to my management, as well as -- well, just
10 generally speaking the internal partners that I worked
11 with, and it had an attachment with my business plan,
12 the PowerPoint presentation. After that page is the
13 business plan itself.

14 Q. Looking at the first page of the business plan
15 itself, and it's the page that has the number 384 as the
16 last three numbers, you have your name and then Dallas
17 region; is that right?

18 A. Yes, sir.

19 Q. What geographical area did the Dallas region
20 encompass in PHS&R?

21 A. The entire state of Texas.

22 Q. Okay. Now, on the -- the page with the map of
23 the state of Texas, you have some information about the
24 Texas Department of Mental Health and Mental
25 Retardation; is that right?

1 A. Yes, sir.

2 Q. For total Medicaid sales, it appears that in
3 2001 the total Medicaid sales had been \$42,769,000,
4 which was a 17 percent increase over the year before; is
5 that correct?

6 A. Yes, sir.

7 Q. Let me ask you to turn to the next page, if you
8 would. This is a page that has something called a SWOT
9 analysis. What -- under the threats, the first bullet
10 point is "Texas Medicaid actively looking to implement
11 additional cost containment measures."

12 A. Yes, sir.

13 Q. And may I assume that since you included this
14 as a threat, among the additional cost containment
15 measures that were being considered were ones that could
16 affect Risperdal?

17 A. Yes, sir.

18 Q. What cost containment measures were being
19 considered by Texas Medicaid actively at this time?

20 A. At the time that this was written, I don't know
21 specifically what was being considered. I know what
22 eventually we knew they were considering was a Preferred
23 Drug List, was one of the big things that could impact
24 Risperdal.

25 Q. And so if there's a Preferred Drug List, does

1 it become important to be on the list?

2 A. Yes, sir.

3 Q. What happens to drugs that aren't on the list
4 if physicians want to prescribe them?

5 A. It makes it more difficult for those physicians
6 to get those prescriptions filled for a Medicaid
7 patient.

8 Q. Let me ask you to look with me at Page -- the
9 page ending in 390, please. The second point under "Key
10 Issues" and "Trends" is "Cost containment measures being
11 considered by Texas Medicaid." Is that what we were
12 just talking about a minute ago?

13 A. Yes, sir.

14 Q. And under the "Implications" column, the first
15 bullet point says: "Texas ranks" third of the 50 --
16 "3/50 in Medicaid sales," 42.7 million. Did I read that
17 right?

18 A. Yes, sir.

19 Q. Is your point that we've got a lot at stake in
20 Texas?

21 A. Yes, sir.

22 Q. The next bullet point under "Implications"
23 concerning cost containment measures says: "Prior
24 authorization" equals "immediate, significant decline in
25 market share," and the words "immediate" and

1 "significant" are underlined.

2 A. Yes, sir.

3 Q. Explain that to me, please.

4 A. That means that if there is a prior
5 authorization or some -- if -- if a physician is
6 required to seek permission from Texas Medicaid in order
7 to get a Risperdal prescription filled, that we've seen
8 historically where physicians aren't as inclined to try
9 to even write the prescription because it's a barrier to
10 them getting them filled and it's time-consuming for
11 them. Although they may think that drug is the best
12 choice, they will go another route and use a drug that
13 is not -- is not as difficult to get prescribed or
14 filled.

15 Q. You shared this business plan with others in
16 management and others with whom you've dealt in your
17 job; is that right?

18 A. Yes, sir.

19 Q. The last bullet point says: "TMAP,
20 pharmacoeconomic profile of Risperdal and strong
21 advocacy support and would make implementing P.A. very
22 difficult." Did I read that right?

23 A. Yes, sir.

24 Q. And you thought when you wrote this
25 presentation in June of 2002 that TMAP would be among

1 the factors that would make implementing prior
2 authorization as to Risperdal a difficult thing for
3 Medicaid to do?

4 A. Yes, sir.

5 Q. And is -- what did you understand it was about
6 TMAP that would make it hard for Medicaid to subject
7 Risperdal to prior authorization restrictions?

8 A. Well, I felt that if -- you have these
9 guidelines that are basically implemented within the
10 mental health/mental retardation system in terms of how
11 to use these medications and if the MHMRs are utilizing
12 these guidelines and -- then it would be difficult for
13 the -- for Texas Medicaid to say, okay, we are going to
14 go in a different direction than the generally-accepted
15 guidelines that were based on clinical available data.
16 It would be difficult for them to say, well, we're going
17 to go in a different direction that varies from those
18 guidelines.

19 Q. We're still under the same goal of maintaining
20 open access to Risperdal within Texas Medicaid, but now
21 instead of strategies we're talking about tactics. What
22 do tactics mean in this context?

23 A. The tactics are more the specific actions that
24 would be taken that fell under the strategies that we
25 outlined on the previous page or specific -- specific

1 things that needed to be done, specific actions that
2 needed to be taken relative to the strategies that we
3 outlined.

4 Q. All right. Well, the first tactic you list
5 here is "Work with" State Government Affairs "to develop
6 a POA" -- is that plan of action?

7 A. Yes, sir.

8 Q. A plan of action "to protect Risperdal against
9 prior authorizations and other cost containment
10 measures," and in parenthesis you say, "Complete by
11 July 1." Did that happen?

12 A. I don't recall, sir.

13 Q. The next bullet point says: "Routinely meet
14 with Leslie Harper and Martha McNeill (Vendor Drug
15 Program Directors)," and beside that it says "Monthly."
16 Did that ever happen?

17 A. I would meet with them. Oftentimes it was
18 monthly. I don't know if it was consistently during my
19 entire tenure at the vendor -- in that position as
20 reimbursement manager.

21 Q. All right. At the Vendor Drug Program, was it
22 principally Ms. Harper and Ms. McNeill with whom you
23 would meet?

24 A. Primarily Ms. Harper.

25 Q. All right. And would you sometimes do that by

1 yourself and other times with Mr. Ponder or was it
2 always one way or the other?

3 A. Primarily myself, sometimes with Mr. Ponder.

4 Q. All right. And would she be one of the key
5 influencers or key decision-makers within Texas Medicaid
6 insofar as the Vendor Drug Program was concerned?

7 A. I think she had influence. I don't know if
8 she's a key influencer. I think she had some influence.

9 Q. Well, there was anyone you met with more
10 frequently than you did Ms. Harper at Texas Medicaid?

11 A. Within -- within the Vendor Drug Program?

12 Q. Yes, sir.

13 A. No, sir.

14 Q. Let me ask you to look at the page that ends
15 with 399. And is this one of the slides dealing with
16 this goal of ensuring favorable reimbursement
17 positioning for Risperdal CONSTA on TMAP?

18 A. Yes, sir.

19 Q. We start -- on this slide we start with --
20 under the heading "Tactics" with a bullet point that
21 says "TMAP Ownership" with three exclamation points, and
22 it's said to be an ongoing activity. Were you assigned
23 ownership of TMAP?

24 A. That fell into my areas of responsibility.

25 Q. Mr. Coard, Exhibit 1814 is a document that has

1 your name on every page. The first page deals with the
2 key objective of leveraging "the influence of advocacy
3 to influence PHSR initiatives." Do you see that at the
4 top left part of the page?

5 A. Yes, sir.

6 Q. And the strategy is to "Leverage advocacy's
7 influence to remove barriers to atypical," and in
8 parenthesis "(Risperdal) utilization in Texas." Did I
9 read that right?

10 A. Yes, sir.

11 Q. Let me ask you to take a look with me, please,
12 sir, at the page -- the last page, the page ending in
13 806. Are you with me? And the strategy that's being
14 discussed on this page is to "Protect and maximize
15 Risperdal business on Texas Medicaid," and then there's
16 a column listing four tactics to achieve that strategy;
17 is that correct?

18 A. Yes, sir.

19 Q. The first tactic listed on this page is to
20 "Work with" State Government Affairs "in delivering the
21 Medicaid message with key Medicaid officials," and the
22 status says that that's an ongoing activity. Are you
23 with me?

24 A. Yes, sir.

25 Q. The -- do you know what's meant on this page

1 when there's discussion of delivering the Medicaid
2 message to key Medicaid officials in Texas?

3 A. That would have been the Medicaid message once
4 again, the slide deck that was developed.

5 Q. When you say to work through advocacy to
6 influence Texas Medicaid, is that something that you had
7 a hand in achieving?

8 A. Working with -- with NAMI, yes, sir.

9 Q. With Joe --

10 A. Through advocacy.

11 Q. All right. With Joe Lovelace in particular?

12 A. Yes, sir.

13 Q. And does the strategic goal relate to
14 algorithms -- treatment algorithms?

15 A. That's what it appears, yes, sir.

16 Q. All right. In the "Tactics" column, the second
17 column, if you'll look at the third bullet, there's
18 mention of -- well, it says "Position TMAP/TIMA thought
19 leaders before state/local decision-makers." Do you see
20 that?

21 A. Yes, sir.

22 Q. Now, you've mentioned before names like
23 Dr. Shon, Dr. Miller, Dr. Crismon. Would those be
24 examples of TMAP and TIMA thought leaders?

25 A. Yes, sir.

1 Q. Are you aware of occasions when they made
2 appearances before state decision-makers or local
3 decision-makers in other parts of the country to make
4 presentations about the TMAP algorithms?

5 A. I believe that did happen -- excuse me, I
6 believe that did happen, sir.

7 Q. All right. And are you aware of occasions when
8 Janssen paid the -- at least the expenses for them to go
9 around the country and do that?

10 A. I believe that happened also, sir.

11 Q. All right. We mentioned that there was this
12 meeting in Dallas at The Mansion on Turtle Creek in
13 early June of 2002. Was Risperdal CONSTA a subject of
14 discussion at that meeting?

15 A. I don't recall the -- the contents of the
16 meeting. I'm sure it was since it was a Risperdal
17 CONSTA meeting, sir.

18 Q. All right. Well, it was a TMAP meeting, was it
19 not?

20 A. Or TMAP meeting, I'm sorry, sir.

21 Q. All right. And when you say you're sure it
22 was, are you saying you're sure it was because of this
23 desire to have Risperdal CONSTA placed in a favorable
24 position on TMAP?

25 A. Yes, sir.

1 Q. Do you have Exhibit 1815 in front of you?

2 A. Yes, sir.

3 Q. Now, this is another communication from Nancy
4 Bursch-Smith, your boss, to you; is that correct?

5 A. Yes, sir.

6 Q. And she's calling this a "work session
7 feedback, June 14"; is that right?

8 A. That's correct, sir.

9 Q. So this would have been within -- oh, the
10 meeting would have been within ten days or so after the
11 TMAP advisory board meeting in Dallas.

12 A. Okay.

13 Q. Skipping down to the heading of "CONSTA," do
14 you see that?

15 A. Yes, sir.

16 Q. Ms. Smith writes: "Developing a strategy in
17 all of your key customer accounts will be critical in
18 Texas for as quick adoption of CONSTA. At our next work
19 session please be prepared to discuss your plan in
20 depth. Steve Shon suggested we concentrate our efforts
21 in the state hospitals as he feels the patients cannot
22 be legally switched after discharge and then the
23 outpatient clinics will gain the needed familiarity with
24 the product (he feels we" -- "he feels we will need to
25 justify the cost of the product as well as the

1 additional increase in services to meet the two
2 injection time frame). You may want to discuss this
3 more in depth with Dr. Shon when you see him at your
4 next appointment."

5 Did I read that correctly?

6 A. Yes, sir.

7 Q. Do you remember, for example, learning at some
8 point that Dr. Shon is giving the advice to Janssen that
9 Janssen should concentrate its efforts on the state
10 hospitals because if patients were started on CONSTA in
11 the hospital, then when they got out of the hospital
12 legally they couldn't be switched to some other drug?

13 A. I vaguely recall that, sir.

14 Q. Of the people that you worked with once you got
15 the job of reimbursement manager, which ones do you
16 recall as having already formed a good relationship with
17 Dr. Shon?

18 A. I thought Nancy had a really good relationship
19 with him, Nancy Smith. I think Rob Kraner had a really
20 good relationship with him. I believe Yolanda Roman had
21 a good relationship with him.

22 Q. All right. Did you get the idea when you went
23 to work as reimbursement manager in Texas for Janssen
24 that Janssen regarded TMAP as being important to
25 achieving Janssen's goals?

1 A. Yes, sir.

2 Q. You understood that TMAP had influence beyond
3 the boundaries of the state of Texas?

4 A. Yes, sir.

5 Q. Let me show you another document that's already
6 been marked as an exhibit in the past as Exhibit 144.
7 And then the format here is that this one covers the
8 month of March 2002, that there would be updates
9 provided by PHS&R managers from different places in the
10 country?

11 A. Yes, sir.

12 Q. The first line says: "Percy executed his first
13 meeting with Dr. Steve Shon." Do you see that?

14 A. Yes, sir.

15 Q. Does that lead you to believe that before this
16 report was put together that you had already had your
17 initial meeting with Dr. Shon?

18 A. That appears to be the case, sir.

19 Q. All right. The next sentence says: "Since the
20 majority of PHS&R team members have projects based on
21 TMAP, it is important to take note of the following,"
22 and there is a colon. Do you see that?

23 A. Yes, sir.

24 Q. And then after the colon there's information
25 provided. And my question of you is, do you believe

1 that the information that's provided there is a report
2 of information obtained from Dr. Shon?

3 A. What's provided here, it looks as if there is
4 information that came from him.

5 Q. On the next page of this same exhibit,
6 Exhibit 829, Yolanda Roman is writing to a group of
7 people who -- that once again includes you; is that
8 correct?

9 A. Yes, sir.

10 Q. She says, "I would like to address some " --
11 and I'm looking at the second paragraph of her e-mail.
12 "I would like to address some areas/issues that the
13 entire team above needs to be aware of. During the last
14 few months, Steve Shon, Miller and Crismon have"
15 spent -- "have spend a considerable amount of field time
16 with most of the PHS&R managers. These 'state' visits
17 have been in the form of influencing, implementing,
18 monitoring and managing TMAP or TMAP-like initiatives.
19 Shon and Miller are also on the CME Public Sector series
20 faculty (2000, 2001 and 2002 series) -- specific to TMAP
21 initiatives. We have a great opportunity to position
22 this subject matter again in 2003."

23 Did I read that right?

24 A. Yes, sir.

25 Q. And were you aware of -- that Janssen paid for

1 the expense, the cost of having Dr. Miller, Dr. Shon,
2 Dr. Crismon traveling around to meet with PHS&R managers
3 like you in other places of the country?

4 A. I believe I did, sir.

5 Q. Skipping down to below the middle of the page,
6 do you see a paragraph that starts "Key states dependent
7 on TMAP"?

8 A. Yes, sir.

9 Q. The states it lists as being dependent on TMAP
10 are Pennsylvania, Ohio, Virginia, District of Columbia,
11 Illinois, Georgia, Kentucky, Connecticut, Washington,
12 Florida, et cetera; is that correct?

13 A. Yes, sir.

14 Q. Let me show you another exhibit that's been
15 previously marked as Exhibit 1590. Do you get the idea,
16 Dr. Shon was trying to be helpful to Janssen in helping
17 them figure out how best to achieve success with CONSTA?

18 A. I believe so, sir.

19 Q. Let me show you another document that's already
20 been marked as an exhibit. It was Exhibit 153. You say
21 that: "To follow were some of the key takeaways from an
22 abbreviated meeting with Dr. Shon. We agreed to meet
23 again in the near future to discuss these issues and
24 others in more" detail; is that correct?

25 A. Yes, sir.

1 Q. I'm not going to go through all of it, but the
2 second bullet point says: "Dr. Shon felt a key to
3 successfully launching CONSTA in Texas was to focus on
4 inpatients. He said that it is rare for stable patients
5 to be switched from one antipsychotic to another when
6 they enter their community mental health center ...
7 They typically stay on what they were prescribed as an
8 inpatient. Therefore it's imperative to drive
9 utilization in the inpatient facilities."

10 Did I read that part correctly?

11 A. Yes, sir.

12 Q. All right. Is that a -- is that similar to
13 what Ms. Smith reported Dr. Shon having told her?

14 A. There are some similarities, yes, sir.

15 Q. All right. So he told you pretty much the same
16 thing?

17 A. Yes, sir.

18 Q. On the next page of Exhibit 153 in the bullet
19 point at the top of the page, you say: "Dr. Shon
20 solicited Janssen's support for the following
21 initiatives." The first one is "Financial support for
22 the reproduction TMAP patient education materials"; is
23 that right?

24 A. Yes, sir.

25 Q. The next one, "Educational grant for Dr. Shon

1 to support the presentation of TMAP at the Korean
2 equivalent of the American Psychiatric Association
3 Annual Meeting."

4 Did I read that one right?

5 A. Yes, sir.

6 Q. And the third one was "Educational grant to
7 support a resident's presentation of a poster at the
8 Korean-American Psychiatric Meeting."

9 Did I read all three of those correctly?

10 A. Yes, sir.

11 Q. So in this abbreviated meeting with Dr. Shon,
12 are you saying that he sought financial support from
13 Janssen for these activities?

14 A. That's the way it looks, sir, yes, sir.

15 Q. All right. In any case, you passed along
16 Dr. Shon's request for financial support from Janssen
17 for these three initiatives?

18 A. Yes, sir.

19 Q. Two of which had to do with a Korean-American
20 psychiatric meeting of some kind; is that correct?

21 A. Yes, sir.

22 Q. And one of which had to do with TMAP?

23 A. Yes, sir.

24 Q. Mr. Coard, do you have Exhibit 1517 in front of
25 you?

1 A. Yes, sir. It's 1718.

2 Q. I'm sorry. Is the subject of the e-mail "Final
3 details for Steve Shon home-office visit"?

4 A. Yes, it is, sir.

5 Q. And in the first paragraph do you say that that
6 visit is going to take place on September 16?

7 A. Yes, sir.

8 Q. You say "It is critical that we support and
9 maintain a strategic alliance with Dr. Shon for the
10 following reasons," and then you list a number of
11 reasons, correct?

12 A. Yes, sir.

13 Q. You point out that 85 percent of all
14 antipsychotic -- antipsychotic dollars come from public
15 sector payors?

16 A. Yes, sir.

17 Q. You say "Dr. Shon has demonstrated his
18 influence and support of new drugs on TMAP. TMAP
19 currently impacts systems of mental health care in 17
20 states with additional states actively looking to
21 implement similar treatment algorithms."

22 Did I read that right?

23 A. Yes, sir.

24 Q. And were these true statements as far as you
25 know?

1 A. Yes, sir.

2 Q. And then the last of these bullet points says:
3 "A proactive approach with Dr. Shon to support/partner
4 with his current and future projects in the public
5 sector arena will continue to position Janssen as a true
6 partner in public mental health initiatives."

7 Did I read that one right?

8 A. Yes, sir.

9 Q. Do you have Exhibit 1819 in front of you?

10 A. Yes, sir.

11 Q. This is in -- in this e-mail you're giving
12 Nancy Bursch-Smith and Ruth Valpreda information about
13 what you know at that time about who will attend
14 Dr. Shon's presentations, true?

15 A. Yes, sir.

16 Q. Now, the first name is Alex Gorsky. What was
17 Mr. Gorsky's job at the time?

18 A. Mr. Gorsky was the president of Janssen.

19 Q. All right. And Janet Vergis?

20 A. I believe VP of Marketing, CNS Marketing or VP
21 of Marketing.

22 Q. And do you remember Alex Gorsky --

23 A. Yes, sir.

24 Q. -- attending?

25 A. I believe he did, sir.

1 Q. All right. And Janet Vergis?

2 A. I believe she did also, sir.

3 Q. All right. This occasion, this home office
4 visit, gave Dr. Shon the opportunity to make a
5 presentation to people that included the top people in
6 the company at Janssen seeking Janssen's financial
7 support for projects in which he had an interest, true?

8 A. Yes, sir.

9 Q. All right. And I believe we've established
10 this, but it's your understanding that Janssen paid for
11 Dr. Shon's expenses to come up to the home office and
12 make this presentation?

13 A. Yes, sir.

14 Q. You previously -- when we were going over your
15 June 28th call note when doctor -- or contact report
16 when Dr. Shon had approached you about funding for
17 certain projects, two having to do with the
18 Korean-American psychiatric meeting and one having to do
19 with TMAP patient educational materials, if that was the
20 only time when Dr. Shon had, in your presence, sought
21 Janssen's financial support for projects that he was
22 interested in. Do you remember my asking that you?

23 A. Yes, sir.

24 Q. Does looking at your own recap of the
25 presentation Dr. Shon made in New Jersey at the Janssen

1 headquarters help to you recollect that there were at
2 least two occasions when Dr. Shon sought financial
3 support from Janssen during this period of time in the
4 June to September time frame of 2002?

5 A. Yes, sir.

6 Q. And the three projects that he talked to you
7 about in June were different projects from the ones he
8 talked to the top brass at Janssen about in September,
9 correct?

10 A. Yes, sir.

11 Q. Are you aware of times when payments were made
12 on -- in connection with these various pet projects of
13 Dr. Shon's that he would bring up and ask for Janssen's
14 support?

15 A. Yes, sir.

16 *(Video stopped)*

17 MR. McCONNICO: Your Honor, Johnson &
18 Johnson has a very short tender for this deposition.

19 *(Video played as follows:)*

20 **CROSS-EXAMINATION**

21 Q. And then when did you first have any
22 responsibilities at Janssen that had to do with the drug
23 Risperdal?

24 A. Sir, that would have been when I was a hospital
25 representative in March of 1998 or thereafter.

1 Q. All right. In San Antonio?

2 A. Yes, sir.

3 Q. Did you ever discuss Risperdal or Risperdal
4 CONSTA's safety information with Leslie Harper?

5 A. No, sir.

6 Q. Did you ever discuss safety as it pertains to
7 Risperdal or Risperdal CONSTA with Martha McNeill?

8 A. No, sir.

9 Q. Mr. Coard, do you have Exhibit 1825 in front of
10 you?

11 A. Yes, sir.

12 Q. If you would, would you flip over to the page
13 ending with 453?

14 A. Yes, sir.

15 Q. And you recall Mr. Jacks asking you some
16 questions regarding this document?

17 A. Yes, sir.

18 Q. And I'd like to first focus on the -- on the
19 box entitled "Texas Medicaid." Do you see that?

20 A. Yes, sir.

21 Q. John Hellerstedt, M.D. Did you ever present or
22 share any information pertaining to Risperdal or
23 Risperdal CONSTA's safety information with
24 Dr. Hellerstedt?

25 A. No, sir.

1 Q. With respect to Ms. Harper within the Vendor
2 Drug Program at Medicaid, did you ever share with her
3 any safety information pertaining to Risperdal or
4 Risperdal CONSTA?

5 A. No, sir.

6 Q. With respect to Martha McNeill at Texas
7 Medicaid, did you ever share safety information
8 pertaining to Risperdal or Risperdal CONSTA?

9 A. No, sir.

10 Q. Mr. Coard, the next person is Representative
11 Mike Davis. Do you see that name?

12 A. Yes, sir.

13 Q. Did you ever share with Representative Davis
14 any information pertaining to Risperdal or Risperdal
15 CONSTA's safety?

16 A. No, sir.

17 Q. Nancy Kimble, did you ever share any
18 information with her pertaining to Risperdal's safety
19 or -- Risperdal or Risperdal CONSTA's safety?

20 A. No, sir.

21 Q. Then below that is TDMHMR, and it has a number
22 of people listed there. Did you ever share information
23 pertaining to Risperdal's safety, Risperdal CONSTA's
24 safety, with Steven Shon?

25 A. No, sir.

1 Q. How about Lynn Crismon?

2 A. No, sir.

3 Q. Ann Richards?

4 A. No, sir.

5 Q. Dan Still?

6 A. No, sir.

7 Q. What about Joe Lovelace, did you ever share
8 with him information pertaining to Risperdal or
9 Risperdal CONSTA's safety?

10 A. No, sir.

11 Q. And what about the individuals listed there at
12 the -- at the bottom of the page?

13 A. No, sir.

14 Q. And they're not listed here, but what about
15 Dr. Miller? Did you ever share information regarding
16 Risperdal or Risperdal CONSTA's safety with Dr. Miller?

17 A. No, sir.

18 Q. How about Dr. Chiles?

19 A. No, sir.

20 Q. How about anybody who you associated with TMAP?

21 A. No, sir, that wasn't my job.

22 Q. Okay. And Mr. Coard, I'm going to ask you the
23 same questions regarding information pertaining to the
24 efficacy of Risperdal or Risperdal CONSTA, okay? So if
25 we start at the top, within Texas Medicaid did you share

1 any information regarding Risperdal or Risperdal
2 CONSTA's efficacy with any of those individuals listed?

3 A. No, sir.

4 Q. And that would include Dr. Hellerstedt,
5 Dr. Harper, Dr. -- I'm sorry, Dr. Hellerstedt,
6 Ms. Harper, Ms. McNeill, Representative Davis or Nancy
7 Kimble?

8 A. That's correct, sir, I did not.

9 Q. Mr. Coard, did you ever share any information
10 pertaining to Risperdal or Risperdal CONSTA's efficacy
11 with Dr. Shon or anyone who you thought was affiliated
12 with TMAP?

13 A. No, sir.

14 Q. Mr. Coard, with respect to the side effects
15 pertaining to Risperdal or Risperdal CONSTA, did you
16 ever share such information with anybody at Texas
17 Medicaid?

18 A. No, sir.

19 Q. Did you share any of that information with
20 Ms. Harper or Ms. McNeill?

21 A. No, sir.

22 Q. You talked a little bit about your interactions
23 with Ms. Harper, and as I understood your testimony, you
24 would have occasion to talk with her when you would go
25 there to collect claims data --

1 A. Yes.

2 Q. -- is that correct?

3 A. Yes, sir.

4 Q. Did Ms. Harper ever tell you to leave her
5 alone?

6 A. On the contrary, I always found her to be
7 extremely accommodating. And she -- she always appeared
8 to be not just willing to -- to help me out, because she
9 knew I was new, but she appeared to -- to -- to be
10 really willing to do it and without any reservations.

11 Q. Mr. Coard, can you describe the basis for the
12 majority of your interactions with Leslie Harper within
13 VDP?

14 A. The basis of those conversations would have
15 been primarily because I was there collecting claims
16 data and I would have inter -- opportunities to have
17 conversations with her at that time. But also, as we
18 discussed, the need for me to gather information on how
19 Risperdal CONSTA or how injectables, generally speaking,
20 were reimbursed and reimbursed as medical benefit,
21 pharmacy benefit. It was just an opportunity for me to
22 acquire information from her in order for me to do my
23 job.

24 *(Video stopped)*

25 MR. McCONNICO: Your Honor, that is the

1 end of the tenure for Johnson & Johnson.

2 MR. MELSHEIMER: Your Honor, I believe
3 this concludes the evidence that we have today on the
4 TMAP project. We're ready to move on to something else
5 tomorrow.

6 THE COURT: All righty. Why don't y'all
7 get a running start going home. Don't freeze tonight.
8 See you in the morning.

9 *(Jury not present)*

10 THE COURT: We're in recess, so let me --
11 why don't y'all -- let me walk out of here for a while,
12 and why don't y'all come up with a small list of things
13 I need to touch upon this evening.

14 MR. McCONNICO: This evening?

15 THE COURT: Yeah. I mean, the more time
16 we spend in here is less time that y'all spend back
17 preparing or at home.

18 *(Recess taken)*

19 *(Jury not present)*

20 THE COURT: What are we going to work on?

21 MR. McCONNICO: Dr. Friede -- or
22 Mr. Friede. I'm so used to saying doctor. Attorney
23 Friede.

24 THE COURT: Okay.

25 MR. McCONNICO: Mr. Jacks has given up on

1 a lot of things, Your Honor, but he still has some that
2 he's insisting on.

3 THE COURT: Yeah. Give me one second
4 here. I was just trying to get a courthouse built. In
5 the future when none of us will be able to do it, there
6 will be giant courtrooms, and we'll be able to -- and
7 all this stuff will drop down and come up.

8 MR. McCONNICO: We'll visit.

9 THE COURT: Okay. Plaintiffs' proffer.
10 Okay. So what I need out of y'all is your objections to
11 this. I'll be right back.

12 *(Brief pause)*

13 So -- no, go back. Now, you're tall.
14 You've got to remember to stay back. I've got
15 Napoleonic body space range.

16 So how do you want to make your objection?

17 MR. LAUER: We'd like to make our
18 objections to the three specific opinions that are
19 listed at the top there. And I've conferred with
20 Mr. Jacks, and he agrees that the proffer reflects that
21 those three specific opinions will be offered by
22 Mr. Friede, and that's what we'd like the Court to
23 consider and hopefully rule on.

24 THE COURT: I'm prepared to rule on them
25 now.

1 MR. LAUER: Okay.

2 THE COURT: Carol, would you look down
3 there and see if there's not an eight ball on that
4 second shelf.

5 MS. JENSON: Hey, there is.

6 THE COURT: I only use this on special
7 occasions. No. I like doing it for out-of-town
8 attorneys because I know they flee back to Dallas and
9 Houston and go, "I had some madman and he looked at an
10 eight ball, and he denied my motion for summary
11 judgment."

12 I believe I rule that attorney Friede will
13 be able to testify regarding that Janssen and Johnson &
14 Johnson's representations of superiority and promotional
15 labeling and advertising caused Risperdal to be
16 misbranded in violation of federal law. You note that I
17 omitted a word.

18 Number two, I rule that he will be able to
19 testify that certain defendant-sponsored child and
20 adolescent medication education events and the efforts
21 to "seed the literature" with child and adolescent
22 studies would be regarded as a promotional activity
23 under FDA law.

24 Now, my question is, tell me why -- why
25 does Friede say that?

1 MR. JACKS: Because of the exhibits in --
2 there's evidence that came in -- I think has come in
3 already or will come in next week on the -- that has to
4 do with their publication planning program where they
5 would meet with their -- have their marketing
6 representatives meet with Excerpta Medica and they
7 had -- I think this was shown in opening statements --
8 this program where they would mass produce articles
9 specifically aimed at the child and adolescent market,
10 to seed the literature to promote the use of Risperdal
11 for use in children at a time when there was no
12 pediatric indication from the FDA.

13 THE COURT: Okay. Carol, would you get
14 the *Birchfield* cases, the ones that I've set aside, and
15 let me read all the -- I think those are they. And then
16 there's a couple of -- you have -- no, no, stop. Go
17 back. Go back down. There, that, those two.

18 Then third is that Arnold Friede will be
19 able to testify that defendants' promotion for children
20 and adolescents caused Risperdal to be misbranded in
21 violation of federal law.

22 Anything else you want to put in the
23 record?

24 MR. LAUER: Your Honor, can we talk about
25 the call notes and the use of the call notes as a basis

1 for the opinions? We specifically note in what I
2 provided to you there in the -- in the bullet points
3 here a number of inadequacies.

4 THE COURT: Okay. Let's start on one,
5 because I'm going to have a response for the record to
6 show the appellate court the results of my thinking on
7 each one. So you start on one and then I'll start on
8 one.

9 MR. LAUER: All right. So let's start
10 with the call notes. Mr. Friede uses the call -- uses
11 call notes as a source of his opinion. We argue that
12 there's an analytical gap there that precludes his
13 opinion, because if you -- 500,000 call notes were
14 produced to the plaintiffs. Of those, the attorneys for
15 plaintiffs chose 6,000, and Mr. Friede reviewed a --
16 what we'll call a tiny fraction, because it's not clear
17 how many he did. It's a constantly moving target, but
18 it's a small, small, small number. And for him to
19 conclude on the basis of that tiny fraction that there's
20 pervasive activity as represented in one or more of
21 those call notes is an analytical gap that's precluded
22 by *Gammill*.

23 THE COURT: The -- the defense counsel has
24 not provided me a shred of evidence that the call
25 notes -- that the 6,000 call notes are not a

1 representative sample. They have merely argued it. And
2 theoretically, under Monte Carlo studies and other types
3 of things, you could pick a subsample of 6,000 and be
4 within plus or minus 5 percent of the mean call note of
5 a universe of 500,000. And so there's just argument,
6 but there's no evidence that there's any unreliability
7 or any type of analytical gap under *Gammill*. Let's move
8 to the second.

9 MR. LAUER: Just can I --

10 THE COURT: This is not a debate.

11 MR. LAUER: Okay. Yes, Your Honor. The
12 second is the use of the selected internal business
13 plans and the sales training materials. We've cited a
14 case to you out of this Court of Appeals that
15 specifically held that the use of business plans or
16 letters of intent or similar materials without a context
17 being first laid to describe what was the purposes of
18 those documents, under what circumstances were they
19 created, without that kind of context, those are
20 inappropriate bases for an expert to draw conclusions.

21 THE COURT: And the Court has chosen -- I
22 mean, I can't put the evidence in -- necessarily in
23 sequence with this number of witnesses, but I am
24 confident -- and I'm going to allow them to urge this at
25 the close of plaintiffs' case if the plaintiff has not

1 provided the context for the ultimate decider of fact.

2 MR. LAUER: Okay. And then lastly, the
3 use of the -- the use of the field conference reports.
4 At no point does Mr. Friede ever specify a particular
5 field conference report. He refers to them in
6 boilerplate language vaguely three times without ever
7 identifying a specific one. We have no idea what he's
8 talking about or what he's basing this on. And again,
9 it is the plaintiffs' burden to prove that this is
10 admissible testimony. It's therefore their burden to
11 prove that the bases of the testimony are reliable, not
12 only with respect to the call notes, but with respect to
13 all of these materials. And to the extent that they
14 failed to do that, they failed to meet their burden, we
15 believe the Court should exclude that material as a
16 basis for opinion.

17 THE COURT: I want the record to reflect
18 that in making my evidentiary decision, in addition to
19 taking a look at Texas Rule of Evidence 702 and the case
20 law which requires me to -- to conduct a
21 *Daubert-Robinson* gatekeeping function on it and to
22 consider the six factors that are normally considered in
23 the admission, that where we -- here we have the --
24 something where the six factors are not directly
25 applicable, then I shift over to the *Gammill Jack*

1 *Williams Chevrolet* analysis. But I have been guided by
2 *Birchfield*, which is found at 747 SW 2d 361.
3 Additionally, a case called *Louder*, L-o-u-d-e-r, versus
4 *De Leon*, which the site upon it is the Texas Supreme
5 Court case 754 SW 2d 148.

6 In there, there was a discussion that the
7 Court found sort of instructive, and it said that jurors
8 realize that they are the final triers to decide the
9 issues, and they may accept or reject an expert's view.
10 Thus, there is little danger in an expert's answer to an
11 all-embracing question of a mixed question of law and
12 fact. Fairness and efficiency dictate that an expert
13 may state an opinion on a mixed question of law and fact
14 as long as the opinion is confined to the relevant
15 issues and is based on the proper legal concepts, citing
16 back to *Birchfield*.

17 The Court then -- the Supreme Court then
18 went on to note that we note that other rules of
19 evidence concerning expert testimony still come into
20 play. The expert testimony on the mixed question of law
21 and fact is still subject to Texas Rule of Evidence 702,
22 scrutiny as to whether it helps the trier of fact. And
23 the record should reflect that I've made a determination
24 that this testimony by Mr. Friede concerning the
25 extremely complicated federal laws of the federal drug

1 act, that testimony would be helpful to the jury, that
2 it is beyond the ken, k-e-n, of the jury, and that this
3 is also -- it may be tested under Texas Rule of
4 Evidence 403 subject to the objection of unfair
5 prejudice, confusion of the issues or misleading the
6 jury, which the Court has made a finding that it is not.

7 And then finally, the Court's been guided
8 by a Texas Supreme Court case *In Re CHRISTUS Spohn,*
9 *S-p-o-h-n, Hospital Kleburg, CHRISTUS Spohn Health*
10 *System Corporation doing business as CHRISTUS Spohn*
11 *Hospital Kleberg, Relator, Texas Supreme Court 222 SW 3d*
12 *434, 2007.* There, there was even a longer passage of
13 two paragraphs that the Court found instructive. This
14 case tells the Court that the expert witness occupies a
15 unique place within our adversarial system of justice,
16 considered to have knowledge, skill, experience and
17 training or education, Texas Rule of Evidence 702, that
18 will assist the trier to understand the evidence or to
19 determine the fact at issue. The expert is generally
20 held out to be and is seen by the jury as an objective
21 authority figure, more knowledgeable and credible than a
22 typical lay witness.

23 And that's thus the danger that was cited
24 by the Supreme Court under *Robinson* 923 SW 2d at 553.
25 For this reason, juries are prone to rely on experts to

1 tell them how to decide complex issues without
2 independently analyzing the underlying factors. As the
3 Supreme Court has noted, expert evidence can be both
4 powerful and quite misleading because of the difficulty
5 in evaluating it, citing back to *Daubert vs. Merrell*.

6 The Supreme Court in the 2007 case
7 continues that coupled with the expert's vast potential
8 for influence is the fact that experts are generally
9 unfettered by firsthand knowledge requirements that
10 constrain the ordinary witness. While lay witnesses may
11 only testify regarding matters of which they have
12 personal knowledge, Texas Rule of Evidence 602, expert
13 witnesses may testify about facts or data not personally
14 perceived but reviewed by or made known by them. If the
15 facts or data are a type upon which experts in the field
16 reasonably rely in forming opinions on the subject, the
17 facts or data need not be admissible in evidence. Thus,
18 in many instances, experts may rely on inadmissible
19 hearsay, privileged communications and other information
20 that the ordinary witness may not. Moreover, an expert
21 may state an opinion on mixed questions of law and fact,
22 such as whether certain conduct was negligent or
23 proximately caused injury that would be off limits to
24 the ordinary witness, citing back to *Birchfield* at
25 747 SW 2d 361.

1 And so I'm putting this into the record to
2 reflect that the Court has tried to make a panoramic
3 view of the requirements of the Court in judging this
4 under Rule 702, both from the standards that were
5 promulgated out of *Birchfield* and that continue to the
6 very day; and then secondly, to understand the scrutiny
7 that the Court must apply to judging the methodology
8 which, in a nonscientific standpoint, whether it's
9 someone who is going to judge the bruising on the side
10 wall of a tire as in *Kumho* or someone who's going to
11 opine about the lawfulness of certain behavior with
12 respect to the federal drug act, that you have to use,
13 as the case law dictates that we have to use in our
14 gatekeeping function, flexible attitudes, and they refer
15 back to *Gammill vs. Jack Williams Chevrolet*.

16 That's my ruling. Okay.

17 MR. JACKS: Your Honor, may I, before the
18 hearing closes, submit -- and I'd like to have this
19 marked as an exhibit for the Court only, with respect to
20 the call notes issue, a submission. And I have a copy
21 for counsel. It goes to the status of the call notes as
22 business records under Rule -- Texas Rule of Evidence
23 803.6. It also would go to their admissibility of
24 admissions under Rule 801(e)(2)(c) and (d). And
25 attached are deposition excerpts from five different

1 sales representatives of the company that prove up the
2 business records nature, the questions and answers of
3 healthcare compliance questions from the company, which
4 on page -- the page ending in the numbers 1382771 speaks
5 of the requirement of the company that all physician
6 calls be documented, that they must be complete and
7 confirm the nature of the discussion, and that they have
8 the potential to be audited. And then finally, a field
9 conference report in which one of the sales managers
10 sets out the expectations concerning call notes.

11 MR. LAUER: Can I announce a housekeeping
12 thing, Your Honor?

13 THE COURT: Can I see that?

14 Yeah, can you give me just a second here?

15 MR. LAUER: Of course.

16 MR. JACKS: There should be a blue tab,
17 Your Honor, on the page to which I was referring.

18 THE COURT: Oh, darn, Mr. Jacks. I was
19 looking so forward to reading.

20 MR. JACKS: Sorry. The first page simply
21 is to show that it is a field conference report. That's
22 the language that's there on the next page.

23 THE COURT: Do you want to clean something
24 up?

25 MR. LAUER: Yes, Your Honor. We'd just

1 like to admit as an exhibit the Court's copy of
2 defendants' response to plaintiffs' proffer that we
3 provided to you. Can we do that?

4 THE COURT: Yeah. Do you have a copy?

5 MR. LAUER: Mr. Jacks?

6 MR. JACKS: Yes.

7 MR. LAUER: Do you think I could exchange
8 this so that I can have a clean one that I can admit?

9 *(Conference between Mr. Lauer and*
10 *Mr. Jacks)*

11 MR. LAUER: So then -- I'm backing up.

12 THE COURT: No, no, no. But that was a
13 good instinct.

14 *(Discussion off the record)*

15 THE COURT: Go ahead.

16 MR. JACKS: I simply was -- for the
17 purposes of the record would ask that plaintiffs'
18 proffer regarding the proposed testimony of Arnold
19 Friede that was submitted to the Court earlier today be
20 marked as Court Exhibit P-2, please, and we'll move
21 admission of both P-1 and P-2.

22 THE COURT: P-1, P-2 Court's exhibits are
23 admitted. D-1 Court's exhibits are admitted.

24 *(Court's Exhibits P-1, P-2 and D-1*
25 *admitted.)*

1 THE COURT: The record should likewise
2 reflect that I have reviewed the 400 some-odd page
3 deposition of Mr. Friede and the 106-page, I believe,
4 Friede report and that the material that is D-1 and P-1
5 and P-2 were provided to me and I reviewed prior to my
6 decision. We done here?

7 MR. JACKS: We are, Your Honor. Thank
8 you.

9 THE COURT: See you in the morning.

10 *(Court adjourned)*

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1 THE STATE OF TEXAS)

2 COUNTY OF TRAVIS)

3 I, Della M. Koehlmoos, Official Court
4 Reporter in and for the 250th District Court of Travis
5 County, State of Texas, do hereby certify that the above
6 and foregoing contains a true and correct transcription
7 of all portions of evidence and other proceedings
8 requested in writing by counsel for the parties to be
9 included in this volume of the Reporter's Record, in the
10 above-styled and numbered cause, all of which occurred
11 in open court or in chambers and were reported by me.

12 I further certify that this Reporter's
13 Record of the proceedings truly and correctly reflects
14 the exhibits, if any, admitted by the respective
15 parties.

16 WITNESS MY OFFICIAL HAND this the 12th day
17 of January, 2011.

18 /s/: Della M. Koehlmoos
19 DELLA M. KOEHLMOOS, TX CSR 4377
20 Expiration Date: 12/31/13
21 Official Court Reporter
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