

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHOLOM RUBASHKIN,

Defendant.

Case Number 08-CR-1324-LRR

**Transcripts of
SENTENCING
HEARING
TESTIMONY**

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G & S File No. 50.9445

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,))	
)	
Plaintiff,)	CR 08-1324
)	
VS.)	4/29/10 Proceedings
)	
SHOLOM RUBASHKIN,)	
)	
Defendant.)	

APPEARANCES:

ATTORNEYS CHARLES J. WILLIAMS AND PETER E. DEEGAN, JR., Assistant U.S. Attorneys, Suite 400, 401 First Street S.E., Cedar Rapids, Iowa 52401, appeared on behalf of the United States.

ATTORNEYS GUY R. COOK AND ADAM D. ZENOR, of the firm of Grefe & Sidney, 500 East Court Avenue, Suite 200, Des Moines, Iowa 50309,

AND

ATTORNEY F. MONTGOMERY BROWN, of the firm of Brown & Scott, 1001 Office Park Road, Suite 108, West Des Moines, Iowa 50265,

AND

ATTORNEY ALAN ELLIS, 495 Miller Avenue, Suite 201, Mill Valley, California 94941, appeared on behalf of Sholom Rubashkin.

SENTENCING HEARING, CONT.,

held before the Hon. Linda R. Reade on the 29th day of April, 2010, at 4200 C Street S.W., Cedar Rapids, Iowa, commencing at 7:55 a.m.

Patrice A. Murray, CSR, RPR, RMR, FCRR
United States District Court
4200 C Street S.W.
Cedar Rapids, Iowa 52404
(319) 286-2324

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1 (The following was held in open court.)

2 THE COURT: We are ready to continue in
3 the case of United States of America versus Sholom
4 Rubashkin. This is Case Number 8-1324.

5 A couple housekeeping things. Last night
6 after court, I gave the attorneys each a packet,
7 and I'm going to call it Court Exhibit 2, of
8 communications received in writing from various
9 people. And so now we have two packets like that.

10 Any other housekeeping things?

11 Mr. Deegan, did you want to put your victim on for
12 a victim statement, or what did you decide about
13 that?

14 MR. DEEGAN: Your Honor, it's my
15 understanding he will be here at approximately
16 10:30. And I think, depending on what his schedule
17 is, we'll just see what his preference is, and
18 we'll inform the Court.

19 THE COURT: All right. Very fine.

20 Then I guess we're ready to continue,
21 Mr. Cook, with evidence.

22 MR. COOK: All right. Thank you, Your
23 Honor.

24 MR. BROWN: Your Honor, we call Greg
25 Johnson.

1 THE COURT: Greg Johnson has been called.
2 Hello, Mr. Johnson, will you please raise
3 your right hand.

4 GREGORY JOHNSON,
5 called as a witness, being first duly sworn or
6 affirmed, was examined and testified as follows:

7 THE COURT: All right. Will you please
8 come to the witness stand.

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q. Would you state your full name, please.

12 A. Gregory Paul Johnson.

13 Q. And where do you live, Mr. Johnson?

14 A. Iowa City, Iowa.

15 Q. And how long have you lived there?

16 A. Since 1980.

17 Q. And what's your profession, sir?

18 A. I am a computer support technician at the
19 University of Iowa.

20 Q. And what are some of your interests? Do you
21 have any professional interests outside of your
22 employment at Iowa City?

23 A. I enjoy photography and writing. I guess
24 those are two of my main interests. And consumer
25 advocacy is something I've been doing for a while.

1 Q. Do you eat meat?

2 A. I don't. I'm a vegetarian, and I guess you
3 could say that one of my interests or passions is
4 not only vegetarianism for health reasons but also
5 out of concern for animal welfare.

6 Q. Did there come a time when you became
7 familiar with a book by Mr. Bloom regarding the
8 Postville area?

9 A. In 2001 -- in March of 2001, I had gone on a,
10 it was kind of a birthday present from my sister, a
11 road trip to Postville, which, despite having
12 ridden across Iowa numerous times on Ragbrai in the
13 1970s, I had not heard of Postville. So she told
14 me there had been a book about the community, and
15 although I didn't -- I hadn't read the book at that
16 point and she didn't really tell me much about it,
17 it was kind of a surprise, so -- at that point I
18 didn't really want to read the book because I just
19 wanted to experience the community firsthand. And
20 so, as I say, for my birthday in March of 2001, as
21 part of a road trip, we spent a couple of days in
22 Postville.

23 Q. And did you tour the community?

24 A. Yes. My background is such that, you know, I
25 have traveled to various Latin American countries,

1 and also traveled to Israel. I have a general
2 interest in world religions, and so I think her
3 thought was that I would find the community
4 interesting, because of the diversity there, the
5 religious diversity, and also the mix of both, you
6 know, native Iowans, as well as the Latino
7 community and the Jewish community there. And
8 indeed, I did find the community very interesting.
9 I found the people to be very friendly and open,
10 and I had not prior to that had any interactions
11 with Orthodox Jewish people, particularly this more
12 narrow subgroup, I guess you could say, the Chabad
13 Lubavitcher Jews. But my sense was --

14 Q. Let me stop you there.

15 A. Sure.

16 Q. So does this lead up -- this visit lead up to
17 a subsequent visit when you actually went on a tour
18 of the plant?

19 A. Yes.

20 Q. And were these activities in 2001 -- are you
21 kind of acting kind of as an amateur anthropologist
22 as such, some cultural anthropologist?

23 A. Yeah, I wrote about the experience and just
24 shared about my visits to the Jewish market and the
25 Latino market and the locally-owned antique shops,

1 and kind of did my mini version of what my
2 colleague at the university, Mr. Bloom, wrote the
3 book about, but that was my sort of attempt to
4 describe Postville maybe in a more positive light
5 than I was told that his book had done, so --

6 Q. Then did there come a time several years
7 later where you actually went through the plant?

8 A. Yes. I had received an e-mail notifying me
9 about this video that -- sort of a campaign that
10 PETA had launched against the Agriprocessors plant.
11 And then kind of unrelated, a few months later,
12 some friends in Iowa City had told me that they
13 were taking a group to Postville, and asked if I
14 would like to go. And I subsequently found out
15 that part of that visit would involve a tour of the
16 plant, and so -- I would have gone anyway because I
17 wanted to return to Postville, but when I heard
18 that the tour -- you know, the visit to Postville
19 would involve a tour of the plant, I really wanted
20 to have an opportunity to see the packing plant.

21 Q. What year -- when would this have been?

22 A. March of 2006.

23 Q. As an advocate on the -- or someone
24 interested in the ethical treatment of animals,
25 consumer advocate, did you share some of PETA's

1 concerns about the slaughter of -- the kosher
2 slaughter of cattle at the plant?

3 A. Well, I think our concerns are similar,
4 although our approaches are different. I try to
5 inspire people through my example of vegetarian
6 living and -- but I disagree with their methods of,
7 you know, sneaking into a plant, covertly
8 videotaping things, and then boiling down several
9 weeks of video to just a few minutes of what seemed
10 to me to be kind of a smear campaign, but --

11 Q. Let me ask you about that briefly.

12 A. Uh-huh.

13 Q. Did you perceive that the PETA video was
14 casting Agriprocessors in a bad light?

15 A. Well, I didn't know, although what I saw in
16 the video just -- I mean, it's a video, so I
17 couldn't really -- I didn't know what to think, but
18 it just seemed to me that if that was really going
19 on, not just for 3 minutes but for hours and hours
20 every day -- I just couldn't believe that that kind
21 of thing was happening. So something in me just --
22 I thought I wanted to see it with my own eyes
23 and -- rather than just kind of drawing a
24 conclusion based on the video, which I guess most
25 people would have done.

1 Q. So did you tour the plant with other people?

2 A. Yes. And this group was, I don't know if you
3 could say friends of, you know, the community, but
4 it was not, you know, reporters or, you know,
5 people who are out to criticize the plant, so I
6 don't think there was really any effort made to
7 glamorize the tour in any way. The plant was just
8 up and running in its normal capacity, so --

9 Q. Well, did you see any -- did you see any
10 abuse of any of the employees?

11 A. I visited, you know, different factories and
12 businesses in the past, and as a consultant, I do
13 computer work at different businesses, and from
14 what I've seen in my past 30 years as working as a
15 consultant, the Rubashkin plant, to me, seemed to
16 be cleaner than I would have imagined. The
17 employees seemed to be treated well, well-dressed.
18 I mean, it was as clean as you could imagine a
19 packing plant being. And just the entire operation
20 seemed kind of well-organized, beyond just, you
21 know, floors being swept or something. It just
22 seemed like it was a well-run business. That was
23 my impression. And I guess I wasn't sure what to
24 expect. I suppose, coming from my background, I
25 expected the worst, so I was surprised by what I

1 saw there.

2 Q. Did you meet with Mr. Sholom Rubashkin?

3 A. I'm trying to remember now, specifically, who
4 I would have met at the plant. I know that we met
5 some of the owners and the management, but only
6 briefly, just to shake hands and, you know, they
7 welcomed us to the plant, so I may have at that
8 time.

9 Q. Were you able to talk to any of the employees
10 in Spanish that -- during your tour?

11 A. At that time, I didn't, because the employees
12 were really focused on their work, and so there
13 wasn't really time to chat. But, you know,
14 earlier, in my previous visit, I had a chance to
15 visit with people in the community. But everybody
16 seemed, you know, friendly and, like I say,
17 relatively -- I don't want to say happy, but seemed
18 to be content with their work.

19 Q. After this visit, then did you -- did you
20 author an article that you put on your blog or
21 webpage that summarized your visits to
22 Agriprocessors?

23 A. Yes, I did.

24 MR. BROWN: I have nothing further, Your
25 Honor, for Mr. Johnson.

1 THE COURT: Cross-examination?

2 MR. DEEGAN: Briefly, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. DEEGAN:

5 Q. Sir, you said that you do computer work for a
6 living?

7 A. Correct.

8 Q. And you're not an expert in slaughterhouses?

9 A. No.

10 Q. Other than the Postville slaughterhouse, have
11 you ever visited another slaughterhouse?

12 A. No.

13 Q. So when you went on your tour of
14 Agriprocessors -- when you referenced as a
15 consultant you had seen other businesses before,
16 you mean as a computer consultant?

17 A. Yes, correct.

18 Q. And while at Agriprocessors, for instance,
19 you weren't going over their APGEN accounting
20 system or anything like that, were you?

21 A. No, no.

22 Q. And you went on a guided tour of the plant?

23 A. Correct.

24 Q. Who guided the tour?

25 A. I don't recall the person's name, but it

1 would have been one of the probably management or
2 one of the upper employees, I suppose.

3 Q. You opine in your article that this PETA
4 video must have been spliced together in a very
5 manipulative manner. Is that -- was that your
6 conclusion?

7 A. Well, it was based on information -- public
8 information from PETA. They just explained that
9 they had been in the plant for, I guess, several
10 weeks, and, you know, obviously they couldn't
11 present a video that was 3 weeks long, so they
12 narrowed it down to the 3 minutes. And it makes
13 sense, based on what they were trying to accomplish
14 with the video, that they would have spliced it as
15 effectively as they could have to present what they
16 were trying to present, which was a case that there
17 was, you know, inhumane treatment of animals.

18 Q. All right. And you make the counterpoint, I
19 suppose, in your article?

20 A. My point was just that, in standing on the
21 killing floor, in that area, with this small group,
22 and observing the process that, to me, appeared to
23 be identical to what was in the video other than
24 the results -- you know, and that was what seemed
25 odd to me. It was like the same room. I don't

1 know if they had other rooms, but this looked like
2 the same room in the video. But I didn't see
3 animals sort of half alive hobbling around. It was
4 just sort of an instant death.

5 Q. Bottom line, is this something -- your tour
6 happened after this PETA video had been produced?

7 A. Correct.

8 Q. And you said that you never actually talked
9 to any of the employees?

10 A. Casual talk, but nothing, you know, in depth,
11 I guess. When we had some conversation at the
12 beginning or at the end of the tour, that would
13 have been about it.

14 Q. You didn't conduct any interviews, for
15 instance, about whether anyone had suffered any
16 sort of abuse or mistreatment at the plant?

17 A. No, I did not.

18 MR. DEEGAN: No further questions.

19 THE COURT: Anything else, Mr. Brown?

20 MR. BROWN: Just quickly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. BROWN:

23 Q. Were you familiar with the Nathaniel Popper
24 articles that were being written around this time
25 of the PETA video?

1 A. I -- I don't know of those articles, no.

2 MR. BROWN: Nothing further, Your Honor.

3 Thank you.

4 MR. DEEGAN: No further questions.

5 THE COURT: Thank you, sir. You may step
6 down.

7 We're ready for our next witness.

8 THE WITNESS: Thank you.

9 MR. ZENOR: Your Honor, at this time,
10 defense would --

11 THE COURT: We can go ahead and get the
12 witness in here. Who are you going to call?

13 MR. ZENOR: We are going to call Sholom
14 Rubashkin, Jr., at this time.

15 THE COURT: All right. Sholom Rubashkin,
16 Jr. I'm repeating this for our visitors in the
17 other building, because our attorneys were away
18 from the microphone.

19 SHOLOM RUBASHKIN,
20 called as a witness, being first duly sworn or
21 affirmed, was examined and testified as follows:

22 THE COURT: All right. Please come to
23 the witness stand.

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DIRECT EXAMINATION

BY MR. ZENOR:

Q. Please state your name for the Court.

A. Sholom Rubashkin.

Q. And you're actually Sholom Rubashkin, Jr., is that right?

A. That's like a little nickname at the workforce.

Q. I see. I see. So it's to distinguish you from Sholom Rubashkin?

A. When I came back in 2006 to work there, yes.

Q. I see. Why don't you tell me a little bit about your background. Where were you born and raised?

A. Brooklyn, New York.

Q. Where did you go to school?

A. Brooklyn, a suburb of Paris, and Toronto, for --

Q. When did you graduate?

A. I'm sorry?

Q. When did you graduate?

A. Graduated in -- it depends. In the -- in the Jewish world, it depends how you refer to that. There's a few stages, so to speak. I would call it in 2001.

1 Q. Why don't you tell me about those stages.

2 A. Okay. You have -- until about 16, it's -- in
3 Hebrew, it's called a mesivta. It's just when we
4 get introduced to a more in-depth study of the
5 Talmud, Jewish law, and Jewish thought. Then you
6 move on to something -- a stage that's called zal,
7 which is from about 17 to 20. Then you go as a --
8 to another community -- I went to Israel, northern
9 part of Israel. Others go to any part of the
10 world -- to help in a public activity for a year,
11 and then you come back and learn for a few years,
12 and depending on the person, get married, you know,
13 settle down.

14 Q. I see. And when did you get married, if at
15 all?

16 A. I married and -- thank God, and got married
17 in 2004.

18 Q. Who are you married to?

19 A. Sarah. Her maiden name is Debrowski.

20 Q. And where do you and Sarah live?

21 A. We live in Postville, Iowa.

22 Q. And how long have you lived there?

23 A. From July 2006.

24 Q. What brought you to Postville, Iowa?

25 A. We were weighing our options. And, you know,

1 I was going to be a Chabad emissary, I think the
2 Court heard about this yesterday, in -- on a
3 college campus somewhere. And there were a few
4 options, and we ended up with entering the business
5 and decided to come to Postville.

6 Q. How did you decide on that? Who contacted
7 you?

8 A. It wasn't like a one-point contact. It
9 was -- it was a discussion between me and my wife
10 on when we came and who we were. And when we
11 thought about the idea, I contacted my uncles and
12 asked if there was something potentially available,
13 and they thought that there was -- there was
14 something, you know, there was help that could be
15 used, and so I came down.

16 Q. How are you related, if at all, to the
17 defendant?

18 A. A nephew.

19 Q. A nephew. And so you start work at
20 Agriprocessors in approximately summer of 2006,
21 right?

22 A. Yes.

23 Q. What do you do there when you start work in
24 summer of 2006?

25 A. I started in the sales department. And while

1 there, at that point, it would -- there was --
2 business with the national supermarkets was really
3 being developed and coming to a large amount, with
4 Trader Joe's and ShopRite and Kroger's, and the
5 like. And it was -- the systems of the
6 supermarkets create that -- there's a lot of
7 technical -- what you call short pays on invoices
8 for technical reasons, and so I got involved with
9 that, to try to recover those funds.

10 Q. So what was your official job title?

11 A. I was officially listed in the sales
12 department, but I moved over to accounting for --
13 to help with what we called short paid invoices.
14 The exact title, other than the technical
15 accounting department, staff accountant, nothing.

16 Q. And are you still a staff accountant, or did
17 you progress through Agriprocessors's ranks, if you
18 will?

19 A. I -- that was the case until I was -- with
20 the short paid invoices, and then after bankruptcy,
21 when the trustees came to Agri, I was put into the
22 position of the receivables, accounts receivables.

23 Q. Okay. I want to take you back for a second
24 to approximately spring of 2007. You said you're
25 still working in accounting in spring of 2007?

1 A. I'm trying to remember what I said. As I
2 said, I was a transfer from sales. The layout of
3 the plant is that the sales department is on one
4 side, and the accounting department is at the
5 entrance. I don't remember. I definitely was in
6 both places during every single day. The question
7 was -- you're asking where -- where did I start off
8 my day, so to speak, where was my desk. I don't --
9 I don't recall.

10 Q. Regardless, you're there at Agriprocessors?

11 A. Yes.

12 Q. You're working in the office?

13 A. Yes.

14 Q. At that time, spring of 2007?

15 A. Yes.

16 Q. Do you recall a walkout in spring of 2007?

17 A. I do.

18 Q. Tell me about that.

19 A. It's -- it's a little vague. Again, I came
20 in 2006, and I was getting the handle -- you know,
21 the ropes and things, and dealing with worker
22 walkouts was new to me, so some of it is vague.
23 But I do remember that there was a walkout, and
24 there was anger and so on. And I believe that the
25 reason was -- not "I believe." This I do recall.

1 There were no-match letters received by some
2 employees, and they were -- they were -- they were
3 angry about that. And around that time also, there
4 was a lot of the union pressure to try to create a
5 union representation at the plant. And, again,
6 this is -- you know, this is what I heard, that
7 they -- they got the crowd -- you know, they got
8 the people that received this letter to -- to think
9 it was like the management that wanted to -- either
10 didn't like them or -- basically, it was a
11 management thing, and so they walked out, you know,
12 to protest it. As far as I remember also, from
13 within their own ranks, so to speak, they said that
14 "This is crazy. We're just drawing unwanted
15 attention to ourselves. We should get back on."

16 Q. Let me stop you right there. Are you -- are
17 you suggesting there was some relationship between
18 the walkout in the spring of 2007 and union
19 activity?

20 A. Again, this is -- this was the talk. Can
21 I -- can I say that I know that as a fact? No, but
22 that was the talk. And a lot of things -- there
23 was a -- the campaign -- the union campaign was
24 already open and out -- it was out in the open and
25 there was a lot of things happening around that

1 time, meetings and -- again, the campaign was in
2 full swing, so it fit what was going on. I cannot
3 say that I know that for certain.

4 Q. What makes you think there was some
5 relationship between the union and the walkout?

6 A. Other than the -- the background and the open
7 campaign it was waging against Agriprocessors,
8 fellow workers talking.

9 Q. Who was waging an open campaign against
10 Agriprocessors in the spring of 2007?

11 A. UFCW.

12 Q. What's the UFCW?

13 A. I think it stands for United Food and
14 Commercial Workers Union, or something like that.

15 Q. And they took exception to Agriprocessors; is
16 that right?

17 A. Yes.

18 Q. Why is that?

19 A. That's a good question. The way I -- I came,
20 like, again, in 2006. It was right after the PETA
21 story. We're going to another story now. The PETA
22 organization, People for the Ethical Treatment of
23 Animals, had an illegal video taken by a worker,
24 and they released it on the web, and it created a
25 sensation. And I think that the success that they

1 saw -- in the beginning it didn't have much success
2 because the USDA didn't -- didn't stop any of
3 the -- the way it was being done. The rabbis were
4 perfectly fine. It didn't look good obviously if
5 you watched the video, but in the beginning, it
6 seemed like it would be a non-story, but it did
7 carry weight, also within the Jewish community,
8 which is another discussion.

9 Q. Okay. Well, let me stop you right there.
10 You said that the UFCW is waging an open campaign
11 at Agriprocessors. Why is that? In other words --
12 strike that. Was the UFCW trying to organize
13 workers at Agriprocessors?

14 A. Definitely.

15 Q. And so are you saying that it was to their
16 benefit to put out some negative campaign? Did
17 that somehow further their efforts to organize the
18 employees at Agriprocessors?

19 A. Yes. But when you say organize some effort,
20 I'd like to elaborate on what you call some effort.
21 They actually had a phone call put out to the
22 entire Jewish community of New York, an automated
23 message, saying that Rubashkin sells tainted
24 product and so on and the like. They were giving
25 out fliers in parking lots of Trader Joe's, which

1 actually ultimately led, as far as I understand,
2 because I was involved a little with this,
3 ultimately led Trader Joe's to discontinue business
4 with Agriprocessors, because of that campaign.
5 They said they couldn't handle such a -- such --
6 having people in their parking lot giving out
7 fliers about the products they sell. I'm trying to
8 remember other things like that. There were
9 obviously mailings, and they set up an Eye on
10 Agriprocessors account. They were meeting with
11 employees. They were getting Jewish -- some Jewish
12 activists to get involved and write not nice -- bad
13 articles, so to speak, about Agriprocessors. It
14 was a full-fledged campaign. It wasn't "some,"
15 what you call "some."

16 Q. Okay. Let me stop you right there. I'm
17 going to circle back now and talk about the
18 walkout, the specific walkout in 2007. Where were
19 you during the walkout in 2007?

20 A. I don't remember -- first of all, I don't
21 remember the exact time of the walkout. I was in
22 Agri, Agriprocessors, somewhere in the building. I
23 remember that they said that there was a walkout.
24 Either I was in the accounting office or the sales
25 office, but I ended up in the sales department,

1 either a little after the walkout or while it was
2 still happening.

3 Q. I see. And so you didn't -- you didn't
4 actually witness the walkout based on the geography
5 of the plant?

6 A. That's correct.

7 Q. Nevertheless, were you part of any
8 proceedings after the walkout or during the
9 walkout?

10 A. I had gone to speak to my Uncle Heshy. Based
11 on that, I'm remembering that I was in the
12 accounting office when it started, and I walked
13 back to speak with my Uncle Heshy. While there, my
14 father was also -- my father, Yossi, was also in
15 town, and Sholom called a meeting with Jay Eaton in
16 the conference room right off of Heshy's office, my
17 Uncle Heshy's office. And we had a meeting about
18 the walkout, and --

19 Q. Let me stop you right there.

20 A. Uh-huh.

21 Q. Who is "we"? When you say "We had a
22 meeting," who is "we"?

23 A. In the meeting was Jay Eaton, Sholom, myself,
24 my dad, and my Uncle Heshy.

25 Q. Okay. What was that meeting about?

1 A. The meeting was -- it was a high tension
2 meeting, obviously, following a walkout, but also
3 because of the confusion that -- I can't -- if
4 you're going to ask me about technical terms, I
5 don't remember. But I do remember that it was --
6 there was a lot of confusion about how to proceed
7 with no-match letters, you know, what were the
8 options, are you able to fire? And that was not an
9 option, it turned out, just based on -- solely
10 based on a no-match letter. Can you continue the
11 way it is? That was also understood, that it could
12 not. We were trying to find an in-between, what
13 the law demands from, you know, such a situation.
14 You can't -- you can't discriminate. You can't be
15 too hard on the worker or discriminate or anything
16 like that, but you can't, on the other hand -- you
17 couldn't just let things at the status quo, and
18 there was a lot of confusion. And it seemed to me
19 that Jay Eaton himself was having, I don't know if
20 you'd say, having trouble, but it was hard to get
21 to the exact definitive bottom line of what -- of
22 what the laws of the United States were at the
23 time.

24 Q. At the close of that meeting, was there some
25 resolution, or how did the meeting end up?

1 A. As far as I recall, the meeting ended up that
2 these workers need to be approached and told that
3 they need to provide more support for their
4 identification as to who they are. And if they
5 couldn't, then that -- that would be means for
6 dismissal, as far as I recall. Again, I don't
7 remember the technical terms for that.

8 Q. Nevertheless, is it your testimony that there
9 was a great deal of confusion regarding these
10 issues, these no-match issues?

11 A. That's right, yes. As I said before, yes,
12 including by Jay Eaton. It wasn't just we were new
13 to it. It seemed it was -- it was a confusing
14 subject.

15 Q. Let me shift now and talk about
16 post-bankruptcy, okay. You said your role at
17 post-bankruptcy -- your role at post-bankruptcy
18 again was what?

19 A. Accounts receivables.

20 Q. And in accounts receivable, post-bankruptcy,
21 what did you do?

22 A. I was put in charge of -- the Monday after we
23 restarted production, end of November, beginning of
24 December, I was put in charge of all past
25 receivables and anything current being produced.

1 Q. And did you have some relationship with the
2 management structure at Agriprocessors at that
3 time?

4 A. By "management," you mean the trustees?

5 Q. Yes.

6 A. Yes, daily.

7 Q. And describe that relationship.

8 A. Well, if I needed -- I was doing the phone
9 calls and the follow-ups, and so on and so forth,
10 and would prepare documents and go through each
11 customer, try to get -- make a file. In fact, we
12 made a file on each customer. And if I needed
13 further help pursuing any of the receivables, I
14 would then approach them or their legal advisors.

15 Q. So simplify this for me, if you would. Agri
16 sells product, and then Agri is owed on that
17 product, right?

18 A. Agri -- Agriprocessors had outstanding, you
19 know -- there was invoices that were outstanding by
20 a lot of customers, because production just stopped
21 probably a day or 2 or a few days after bankruptcy,
22 which -- by "bankruptcy," I mean November 4th.

23 Q. And so it was your job to ensure that Agri
24 received the money that it was owed, right?

25 A. Yes. To get technical, Agri, Iowa, and

1 New York and Florida were supposed to be doing
2 their own.

3 Q. And in your work there in the receivables
4 department, is there anything that you would have
5 done differently?

6 A. In the beginning, no; however, after there
7 were a few -- there were a few files that I created
8 on certain customers that wanted to reach an
9 agreement, not even a settlement. They just
10 wanted -- you know, might as well give the details.
11 Let's say, as an example, there was Wakefern
12 Corporation, that -- I don't recall if -- if the
13 number we had was about 450,000. They were coming
14 back and wanting to sign and send us a check for
15 420, around there. The exact numbers, I don't
16 recall. And everything was, like, put in place.
17 And I repeatedly was approaching -- there was Marc
18 Ross there at the time, and I was repeatedly
19 approaching him about that, why don't we collect on
20 that in the receivables. As time goes on, 45 days,
21 60 days, especially in the economy the way it was
22 then, and still is, by the time it comes 90 days,
23 it's going to be about 50 cents on the dollar
24 you're going to end up with. And I was watching
25 the receivables as they're getting older, and its

1 value is potentially, and ultimately probably did,
2 was -- was diminished. So there was -- I'll give a
3 few examples. There was Wakefern.

4 Q. Let me stop you right there. You said
5 Wakefern was an outstanding balance that probably
6 should have been followed up on. Were there
7 others?

8 A. Yes. There was MRW Food Brokers, who just
9 wanted, like, a \$700 credit. I had prepared the
10 file, wanted just a signature. They were going to
11 pay \$70,000, and didn't get -- at -- all of the
12 customers I'm going to be saying now, by the time
13 it came spring 2009, when SHF took over
14 post-bankruptcy and the bank took the receivables
15 from pre-bankruptcy, none of these accounts were --
16 as far as to my knowledge, I was still contacting
17 these accounts. So as far as I know, they were not
18 settled by the time it came to the spring. So you
19 had MRW. It was about 70. You had Lincoln
20 Provision, was going to pay \$115,000. You had one
21 small case, but this would -- this would be more
22 clear of what I'm trying to point out. It's a
23 small number, but the disarray and sometimes the
24 help that I did not get would be typ -- would be
25 pointed out in this case. There was Associated

1 Wholesale Food Grocers, had an invoice for \$5,000,
2 relatively, a small amount. And at one point they
3 e-mailed me. I was working through the regular --
4 as I told you, I was -- I had a lot of connections
5 with these supermarkets because of the short paid
6 invoices that I told you about before, so I went
7 through the -- you know, the ladder of the people I
8 had to speak with to get that invoice. And at one
9 point they e-mailed me saying that their legal
10 department had put a hold on all payments to
11 Agriprocessors. And so I printed an invoice and a
12 bill of lading, and I e-mailed that to Julie Diaz,
13 who was their -- who was their legal counsel, or
14 one of the legal counsel, and there was no
15 response. I'm not sure if I e-mailed it again or I
16 had given it personally to a Paula. I don't
17 remember her last name. She was at the plant.

18 Q. Okay. Let me stop you right there. Is it
19 fair to say that there were many -- or what
20 happened to these accounts, outstanding accounts
21 that you mentioned: Wakefern, MRW, Lincoln
22 Provision, TCP? What happened to those accounts?
23 Were they ever paid?

24 A. With regard to the first ones, other than TCP
25 that you mentioned, I don't know. Again, as of the

1 spring of 2009, they were not paid, as far as I was
2 told. I was still contacting them. You mentioned
3 TCP, Twin City Poultry of Minnesota. Them and
4 others, as I mentioned, by the time we had to
5 settle with them, it was already, I would say,
6 90 days of -- the receivables was over 90 days.
7 And I know that they settled, and I tried to get
8 the number from them, but I don't know what they
9 settled on, but I know that they did settle on --
10 their account balance was about 150,000. And what
11 they paid, 75 cents, 60 cents, I don't know. But
12 you had them, and you had a Sun Fresh that had an
13 outstanding balance of \$400,000. I don't know what
14 they ended up paying. Again, to bring out the
15 point that they were, as time went on, these
16 receivables -- and you mentioned New York and
17 Florida before. I do know that there were -- it
18 was 2 and a half million as of spring of 2009 out
19 of New York and 500,000 in Florida that was not
20 collected, and it -- at that point, I can't imagine
21 that they would be able to get much out of that
22 because it was -- it was so late. And I heard from
23 New York --

24 Q. Let me stop you right there. What happens to
25 receivables the longer they're outstanding?

1 A. In my experience -- and that's what I can
2 speak of. I don't know if it's the meat industry
3 in general or my experience. 30 days is -- other
4 than supermarkets, regular customers, 30 days is
5 starting to, let's call it, get -- starting to get
6 old. But when it reaches 45, 60, and -- 45, 60,
7 you'll definitely have to fight it out because a
8 customer will start viewing those as an old debt
9 and will want to go somewhere else, to a different
10 vendor, and forget -- settle. When the time will
11 come 60 days and 90 days, for sure you're going to
12 have to settle on those receivables.

13 I just want to finish off what I was
14 saying before.

15 THE COURT: Just a second. There's no
16 question pending. And let's proceed by Q and A.
17 We're kind of wandering around here, and that takes
18 unnecessary court time, so --

19 MR. ZENOR: Thank you, Your Honor.

20 THE COURT: So focus the witness, if you
21 would, please.

22 MR. ZENOR: Thank you, Your Honor.

23 Q. Was there a reason why these accounts, that
24 you brought up and brought to the attention of the
25 management there, were not collected upon -- or

1 collected upon as soon as you would have seen [sic]
2 happen?

3 A. Not that I know of.

4 Q. And did Sholom Rubashkin have anything to do
5 with that decision?

6 A. No.

7 MR. ZENOR: No further questions.

8 THE COURT: Cross-examination.

9 MR. WILLIAMS: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. WILLIAMS:

12 Q. Let's talk about this period of time after
13 the bankruptcy first, and then we'll kind of move
14 back to some other topics, if that's okay with you.

15 A. Okay.

16 Q. First of all, after the bankruptcy, you did
17 work pretty closely with Marc Ross and Alan Rice
18 regarding collecting receivables, right?

19 A. Yes.

20 Q. Okay. And you made a number of phone calls
21 to former customers of Agriprocessors, Iowa, trying
22 to collect these old debts?

23 A. That's correct.

24 Q. Okay. And you heard from a number of these
25 guys that, they said, "Wait a second, we never got

1 this product. We never ordered this product. I
2 have never seen that invoice before. We don't owe
3 you that money." Didn't you get that response from
4 a number of former customers?

5 A. I don't remember the exact words, but there
6 was denial of some of the things I was calling
7 about, yes.

8 Q. And you brought that to Alan Rice's
9 attention, didn't you?

10 A. No. He was not there at the time in the
11 beginning. I brought it to Marc Ross's attention,
12 yes.

13 Q. Marc Ross was first?

14 A. Yes.

15 Q. And ultimately, you actually helped out with
16 Marc Ross and Alan Rice, showing them that there
17 was a discrepancy between what Agriprocessors's
18 books showed for what was owed to them in accounts
19 receivables versus what the customers were saying,
20 right?

21 A. Half true. They ended up hiring a Nathan
22 Root and a Jordan Meltzer to help out with that.
23 They were going through those -- anything that a
24 customer would say something like you said before,
25 they would be -- they would go through that.

1 Q. Okay. And I guess my point was not
2 necessarily that you would go through it but you
3 brought that to Marc Ross's attention, that there
4 was that discrepancy. You were hearing that --

5 A. There was that claim of discrepancy, correct.

6 Q. Okay. Now, any of the time that you were
7 working in the accounting department prior to the
8 bankruptcy, did you have any involvement in
9 creating false invoices?

10 A. Again, I started in the sales department, and
11 I worked on the short paid invoices. That question
12 doesn't connect in any way to having to do with
13 that.

14 Q. Bottom line is, you had nothing to do with
15 creation of false invoices?

16 A. Better put, I had nothing to do with creating
17 invoices, yes.

18 Q. All right. Now, with regard to -- in your
19 view, there was some accounts receivable that you
20 think ought to be -- ought to have been collected
21 or settled upon that wasn't after the bankruptcy?

22 A. Absolutely.

23 Q. All right. But you agree, you don't know
24 what the resolution of all those accounts were?

25 A. That's correct.

1 Q. Okay. So you have no idea whether, in fact,
2 the trustee was able to collect on those accounts
3 receivable or not?

4 A. That's correct.

5 Q. All right. And you would agree that Marc
6 Ross has a fair amount more business experience
7 than you do, fair?

8 A. Fair enough, but I'd like to add something on
9 a previous question. I know that out of New York
10 and Florida, speaking to my counterparts there,
11 there was the same -- whatever I'm saying now was
12 the same story there, and there they did not
13 collect, so --

14 Q. All right. All right. Let's move back then
15 to talk about this time period of the walkout. You
16 recounted a meeting one time with Jay Eaton. I
17 want to talk about that experience, okay?

18 A. Okay.

19 Q. Now, that was the only time you ever had any
20 kind of access to any alleged legal advice, right?

21 A. Directly from the -- from an attorney in a
22 meeting setting, correct.

23 Q. Okay. So, for example, you don't know what
24 information was provided to Jay Eaton or any other
25 attorney about the workforce at Agriprocessors

1 outside that meeting?

2 A. That's correct.

3 Q. Okay. So you don't know whether, in fact,
4 the defendant in this case told Jay Eaton that he
5 was knowingly employing illegal aliens?

6 A. That was not the subject of the meeting. It
7 was specifically about no-match letters.

8 Q. Okay. During that meeting, did the defendant
9 advise Jay Eaton that he knew that he was employing
10 illegal aliens?

11 A. Not that I recall, no.

12 Q. Did he tell Jay Eaton that he had placed a
13 number of employees on the Hunt payroll because
14 they had presented pink IDs and they had been told
15 that those were bad?

16 A. I don't remember ever hearing anything about
17 that.

18 Q. Okay.

19 A. Again, it was not -- it was not about that.
20 It was about, specifically, no-match letters. It
21 would have no place at the meeting, anything you're
22 asking right now.

23 Q. You don't know ultimately what was disclosed
24 to Jay Eaton about the workforce at Agriprocessors,
25 do you?

1 A. In general, for the 10 years leading up to
2 that meeting, no.

3 Q. And you're not aware of any advice that Jay
4 Eaton or any other attorney had previously provided
5 to Agriprocessors about that workforce?

6 A. That's correct.

7 Q. I want to talk to you a little bit about the
8 unionization activities you talked about. First of
9 all, you're not suggesting that there was anything
10 illegal about unions attempting to organize
11 workers?

12 A. That's -- that's another confusing subject.
13 It depends how you term -- depends where you put
14 the border of how strong their efforts are allowed
15 to be, so I'm not sure about that answer. I would
16 personally think it would be illegal, but I don't
17 know if it would be -- I would personally want to
18 suggest that, but I'm not exactly sure --

19 Q. All right.

20 A. -- in this case.

21 Q. And you understand that the goal of most
22 unions is to try to organize workers in order to
23 advocate for them?

24 A. That's correct.

25 Q. Okay. And there isn't anything wrong about

1 that, is there?

2 A. Absolutely not. If it's done in a fair way
3 and their presentation -- they present the facts
4 the way they are and they don't -- you know, they
5 don't throw snowballs at the company they're trying
6 to -- they don't interfere with day-to-day
7 activity, no, that's good.

8 Q. Okay. And I think you had -- you agreed that
9 you don't really have any firsthand information
10 that would tie the union in any way to the walkout
11 by the employees, right?

12 A. Firsthand information? No.

13 Q. You were hypothesizing, because of the timing
14 of the efforts to unionize and the timing of the
15 walkout, that there must be some connection between
16 them?

17 A. More importantly, usually when workers in a
18 workforce -- in a room are -- all say unanimously a
19 certain thing, it's usually true, but again,
20 that's -- they said it. I didn't. I didn't --
21 that's what the fellow workers were saying.

22 Q. And the -- you talked about there was a phone
23 campaign to people in the Jewish community in
24 New York. You didn't personally receive any such
25 phone call?

1 A. No, but I read the news reports of it, and I
2 heard -- I believe it was saved on a lot of
3 messages they ended up forwarding it to me.

4 MR. WILLIAMS: No further questions, Your
5 Honor.

6 THE COURT: All right, anything else, for
7 this witness?

8 MR. ZENOR: One further question, Your
9 Honor.

10 REDIRECT EXAMINATION

11 BY MR. ZENOR:

12 Q. Do you recall whether Sholom asked Mr. Eaton
13 what he should say to the folks who had walked out?

14 A. Yes.

15 Q. And what did he say or what did he ask?

16 A. It wasn't a one-time question. That was
17 the -- the gist of the whole meeting was -- I can't
18 remember if -- it was definitely the push behind
19 the meeting, if you -- the original one who called
20 it, I don't know, but it was leading to the
21 question of what do you do. You have this
22 confusion about the law, and you also -- on a
23 personal level, you don't want to dismiss anybody
24 you don't have to. He has a relationship with his
25 workers. He didn't want to dismiss anybody just

1 like that. So that was the -- that was the -- all
2 the questions in the meeting was about that, what
3 do you tell them, what do you do.

4 Q. So is it fair to say that Sholom was
5 carefully considering legal advice?

6 A. That's what the meeting was, yes.

7 MR. ZENOR: Thank you.

8 MR. WILLIAMS: Nothing further, Your
9 Honor.

10 THE COURT: Thank you. You may step
11 down.

12 Next witness.

13 MR. COOK: Thank you, Your Honor. We
14 would call Rabbi Leif to the stand, please.

15 THE COURT: Good morning, sir.

16 THE WITNESS: Good morning.

17 THE COURT: I'm going to ask you to
18 affirm an oath.

19 MOSHE TUVIA LEIF,
20 called as a witness, being first duly sworn or
21 affirmed, was examined and testified as follows:

22 THE COURT: Please be seated.

23 THE WITNESS: Thank you.

24

25

1 DIRECT EXAMINATION

2 BY MR. COOK:

3 Q. Good morning, sir.

4 A. Good morning, sir.

5 Q. Please state your name for the record.

6 A. Moshe Tuvia Leif.

7 Q. Your age?

8 A. 51.

9 Q. And where do you reside?

10 A. Now I live in Brooklyn, New York.

11 Q. How long have you lived there?

12 A. 8 months.

13 Q. Where were you before that?

14 A. Minneapolis, Minnesota.

15 Q. Tell us what you do for a living.

16 A. I'm a congregational Rabbi.

17 Q. What does that work involve?

18 A. The whole gamut of counseling, teaching,
19 being involved with all the religious duties of a
20 congregation.

21 Q. Where is that located?

22 A. Well, right now I'm in New York, in Brooklyn.
23 It's one of the largest Orthodox Jewish
24 congregations in New York. It's called Agudath
25 Israel.

1 Q. And about how many in your congregation?

2 A. 400 families.

3 Q. Tell us a little bit about your background.
4 Where were you born and reared?

5 A. Well, I grew up in Brooklyn, New York, and
6 studied for two years in Israel. After I came
7 back, I got married; moved to Ohio. I lived in
8 Cleveland for 12 and a half years, part of the
9 rabbinical college and then teaching high school.
10 And then for 19 years, I was the congregational
11 rabbi in Minneapolis, Minnesota.

12 Q. Are you married?

13 A. Yes, I am.

14 Q. Any children?

15 A. 3 children.

16 Q. Do you know this man here, Mr. Sholom
17 Rubashkin?

18 A. I sure do.

19 Q. And how long have you known him?

20 A. Since about being 8 years old.

21 Q. Long time?

22 A. Long time.

23 Q. And how is it that you've interacted with him
24 over the years?

25 A. Well, the first time I met him was at a boys

1 event on a Saturday night, 3, 400 kids, in the
2 Borough Park section of Brooklyn. And they invited
3 the boys to teach the group a new song, and whoever
4 would do the best job would win a prize. So this
5 little 8-year-old kid climbed up on a chair and
6 started teaching us a song. And before you knew
7 it, the whole crowd was clapping and dancing, and I
8 guess that was the first time I sort of noticed
9 him.

10 Q. That 8-year-old was Sholom Rubashkin?

11 A. Yes, it was.

12 Q. And what other significant interaction did
13 you have with him over the years?

14 A. We were classmates together in elementary
15 school through eighth grade. In fact, my
16 elementary school yearbook is there. Page 23 is my
17 picture with my aspirations to be a math professor;
18 and Page 25, he wanted to be a teacher. And then
19 sort of we didn't have much to do with each other
20 for a few years. But for 19 years, since I became
21 the rabbi in Minneapolis, I had a strong connection
22 with him, philosophically, ideologically,
23 halokhely, concerning Jewish law, and very often
24 just helping me in so many different social areas
25 in the community at large.

1 Q. What kind of a person is Sholom Rubashkin?

2 A. He's a wonderful person. He has a good
3 heart. If I'd be allowed to just illustrate with a
4 story.

5 Q. Certainly.

6 A. Jewish people, especially the Orthodox Jews,
7 tend to be viewed as an oxymoron, because on one
8 hand, we have our strong traditions. On the other
9 hand, we're integrated into society. Not
10 acculturally assimilated, but certainly integrated.
11 In our congregation in Minneapolis, I had 2
12 neurosurgeons, world-renowned, married to each
13 other, husband and a wife; many doctors,
14 physicians, construction workers, all types of
15 people, but very strong in their faith. At one
16 point in time, a couple unfortunately got divorced,
17 and the wife unfortunately sort of lost her faith.
18 Now, again, I'm trying to explain this in the best
19 way that I can, and if I'm encroaching or saying
20 something improper, please stop me.

21 Q. I'd prefer that you try to condense it, but
22 that would be the most important thing.

23 A. Okay, we're there. She chose for herself an
24 alternative life-style, taking the same gender
25 partner. I'm not condoning or condemning, but to

1 Orthodox Jews, that's something very difficult to
2 accept. The Passover holiday was coming and there
3 was a question where she would be. People said
4 let's give her some money to stay in a hotel.
5 Well, she went to Sholom Mordechai Rubashkin's
6 home, and she had the Seder -- which is the holiest
7 night of the year, aside from the Day of the
8 Atonement -- with his family, in his home, with 10
9 children, autistic child, because he cares about
10 people. He thinks out of the box. And his
11 generosity and kindness was not just limited to
12 Jewish people. It wasn't just limited to religious
13 people. It was limited to all kinds of people, and
14 he would think out of the box. And in that way, I
15 always took inspiration from him, from the fact
16 that he cared about people, and he wasn't looking
17 at the picture or the package. So that story sort
18 of illustrates why I'm very fond of him and why I
19 appreciate him.

20 Q. What can you tell us, based upon your
21 experience and interactions with him over these
22 many years, whether he's a person motivated by
23 greed?

24 A. I know of many situations in which -- when
25 his business initially was struggling and it was

1 starting up, he had that same generosity that he
2 had when he was making more money. I didn't see
3 him being a greedy person. There were different
4 times in the Twin Cities, Minneapolis/St. Paul,
5 when questions came up about kosher meat and,
6 whether it was going to be a profit-maker or not,
7 he wanted to do what was right, to the point that
8 he once traveled to Israel to consult with some of
9 the senior great rabbis of our generation and he
10 was willing to accept whatever the decision would
11 be, even if it meant the loss of hundreds of
12 thousands of dollars. That doesn't sound like a
13 greedy man to me.

14 Q. You, of course, know his wife Leah?

15 A. Yes.

16 Q. And you know his children?

17 A. Yes.

18 Q. And he has a special child, Moshe?

19 A. Yes, a special needs child; autistic, I
20 believe.

21 Q. What can you tell us about that relationship
22 between Sholom and Moshe?

23 A. Incredible father. He's not embarrassed of
24 his son. He takes him out to places. This morning
25 we had a prayer service in the hotel that I'm

1 staying at. I flew in late last night. And Moshe
2 was there, sitting integrated with everyone, acting
3 like everyone else. Everyone loves him. Everyone
4 feels connected to him. I've seen parents interact
5 different ways when they are challenged in this
6 way, and he and his wife are incredible in the way
7 that they not just embraced him but highlight him
8 and bring out his real potential, and there was a
9 very strong personal connection. Moshe this
10 morning kept saying again and again, "How's tate?
11 How's my daddy?" And obviously he feels very close
12 to him.

13 MR. COOK: Thank you. No further
14 questions.

15 THE COURT: Cross-examination?

16 MR. WILLIAMS: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. WILLIAMS:

19 Q. Sir, you would agree with me that somebody --
20 if somebody lies, that's a bad character trait?

21 A. Definitely.

22 Q. If somebody obstructed a criminal
23 investigation, that would be a bad character trait?

24 A. Definitely.

25 MR. WILLIAMS: Nothing else, Your Honor.

1 Thank you.

2 THE COURT: Anything else?

3 MR. COOK: No thank you, Your Honor.

4 THE COURT: Thank you, Rabbi. You may
5 step down.

6 THE WITNESS: Thank you very much.

7 THE COURT: Do we have another witness?

8 MR. COOK: One moment, Your Honor.

9 MR. BROWN: Your Honor, we need a
10 2-minute huddle, here.

11 THE COURT: All right.

12 (Defense counsel conferred.)

13 MR. COOK: Thank you, Your Honor. Our
14 next witness will be by telephone.

15 THE COURT: All right. Is this
16 Mr. Kaufman?

17 MR. ZENOR: No, Mr. Zeilingold, Your
18 Honor.

19 THE COURT: All right. This is Rabbi
20 Zeilingold?

21 MR. BROWN: Yes, Your Honor.

22 THE COURT: All right. And for those in
23 Building A, he's going to be appearing by telephone
24 conference.

25 (The telephone connection was attempted.)

1 THE CLERK: I'm going to try his cell
2 number. He didn't pick up.

3 (Telephone connection was established.)

4 THE CLERK: Rabbi?

5 THE WITNESS: Yes.

6 THE COURT: All right. Rabbi Zeilingold,
7 this is Judge Linda Reade. And at this time, I'm
8 going to ask you to affirm an oath.

9 ASHER ZEILINGOLD,
10 called as a witness, being first duly sworn or
11 affirmed, was examined and testified as follows:

12 THE COURT: All right. Rabbi, I need to
13 ask you to help us out by speaking up and directly
14 into the phone receiver. We are not only listening
15 to this in the immediate courtroom, but it's also
16 being transmitted to another building where there
17 are individuals that are watching this proceeding.
18 And we want them to be able to hear your testimony
19 as well as those of us who are sitting here in the
20 courtroom. So can I have your help on that?

21 THE WITNESS: Yes, yes, ma'am.

22 THE COURT: All right. Very fine. The
23 first attorney that might ask you questions is
24 F. Montgomery Brown on behalf of Mr. Rubashkin.

25 And, Mr. Brown, you may proceed, sir.

1 MR. BROWN: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. BROWN:

4 Q. Could you state your full name, please.

5 A. Asher Zeilingold.

6 Q. Could you spell your first name?

7 A. A-S-H-E-R.

8 Q. And what is your profession, sir?

9 A. I'm a rabbi.

10 Q. And was there a period of time where you had

11 a connection with Sholom Rubashkin and

12 Agriprocessors?

13 A. I've been very close with Sholom Rubashkin at

14 Agriprocessors.

15 Q. And in what capacity?

16 A. I'm a good, close, personal friend of Sholom

17 Rubashkin, and I gave kosher supervision on

18 products being made at Agriprocessors.

19 Q. For over what period of time?

20 A. From probably going back about 15 years,

21 until the recent acts, when the company ceased to

22 exist.

23 Q. Would you come to the plant and actually go

24 on the plant floor?

25 A. I've been in the plant several times.

1 Q. Were you responsible for helping supply
2 rabbis to perform the kosher work in the plant?

3 A. No, I was not.

4 Q. All right. And what -- in what capacity did
5 you aid Agriprocessors in the rabbinical?

6 A. I -- I went as a representative to see that
7 the kosher rules were being followed in terms of
8 the production and slaughtering of kosher meat.

9 Q. Was this part of one or more certifications?

10 A. I'm sorry, repeat your question, please.

11 Q. Yeah. Was your inspection as part of a
12 certification process?

13 A. Yes, it was, sir.

14 Q. So in that 15 years, how many times did you
15 actually visit the plant?

16 A. I personally visited the plant. I can't tell
17 you exactly how many times, but we did visit on
18 different occasions to go through the plant.

19 Q. And did you ever see rabbis abusing employees
20 of Agriprocessors?

21 A. I'm sorry, I'm going to ask you, did you ask
22 me if I ever saw rabbis abusing workers in the
23 plant? Is that what you asked me?

24 Q. Yes, sir.

25 A. The answer is, I never saw any rabbi abusing

1 any worker in the plant.

2 Q. Now, did there come a time when Agri was
3 being challenged by Conservative Jewish
4 organizations, the union, and PETA?

5 A. Are you asking me or telling me?

6 Q. Did you -- did you become -- well, do you
7 know anything about that?

8 A. Yes, I do know about that, that Agri was
9 being challenged by Conservative rabbis, PETA, and
10 the labor unions. I do know about that.

11 Q. And did you assist and consult with Sholom
12 Rubashkin about that?

13 A. I did not consult with him. I did what I had
14 to do to find out for myself what I felt would be
15 the truth.

16 Q. All right. And what did you do to find out
17 what you thought was the truth?

18 A. The first thing, as soon as I found out that
19 there were allegations concerning Agriprocessors --
20 and this has nothing to do with PETA and had
21 nothing to do with the unions and had nothing to do
22 with the rabbis. It came out of an article that
23 was published in a newspaper. I made a visit to
24 Agriprocessors immediately as soon as the newspaper
25 came out. And I took that -- Carlos Carbonera with

1 me as an interpreter to visit the plant and find
2 out the truth for myself, because I wanted to know
3 exactly what the story is.

4 Q. And what did you find out?

5 A. We found out that the workers that we met
6 with and the people -- and everybody we talked to,
7 all the workers were very happy, and we did not
8 find one single case of any kind of abuse in the
9 plant, whatsoever.

10 Q. Now, over the 15 years that you've worked
11 with Sholom Rubashkin at Agriprocessors, did you
12 ever see him condone or implement any type of
13 employment policy that would have permitted abuse
14 of his employees by rabbis?

15 A. I really had nothing to do with his
16 employment practices, and I never discussed his
17 employment practices, and I would have no reason to
18 discuss with him. But I never saw or -- firsthand
19 or heard from anyone, and certainly not from Sholom
20 Rubashkin, any idea of any of -- of abuse in the
21 plant whatsoever.

22 Q. Did these allegations that were coming out --
23 were these the allegations that were coming out in
24 the magazine called *The Forward*?

25 A. That is correct. The allegations are coming

1 out in the newspaper -- I don't know if they call
2 themselves a magazine -- called *The Forward*.

3 Q. And was there a Rabbi Allen from the
4 Minneapolis/St. Paul area involved as well?

5 A. Rabbi Allen was involved, not with *The*
6 *Forward*, that I know of, but he was involved as a
7 representative of the Conservative movement or the
8 representative of the Conservative movement.

9 Q. And then did you know whether or not there
10 was a connection between the -- an entity called
11 the Jewish Labor Committee and the Food Workers
12 Union?

13 A. You're asking me if there's any -- if I knew
14 of any connection between the union and who,
15 please? And Rabbi Allen?

16 Q. The Jewish Labor Committee.

17 A. The Jewish Labor Committee and who? And --
18 the Jewish Labor Committee in connection with whom,
19 please?

20 Q. The union.

21 A. I don't know exactly what the Jewish Labor
22 Union [sic] is. If I would be given another name,
23 I might be able to recognize it, but I do not
24 recognize the name or term the Jewish Labor Union.
25 Did you say Jewish Labor Union?

1 Q. I'll just move on. I'll move on.

2 A. I'm saying -- is it the Jewish Labor Union?

3 Q. I said the Jewish Labor Committee.

4 A. The Jewish Labor Committee. I don't know of
5 an organization known as a Jewish Labor Committee.
6 Maybe I know it under another name, but that name
7 is not familiar with me.

8 Q. After you got involved to try to find out the
9 truth and you engage in these interviews of
10 employees, what did you do?

11 A. I made my feelings very well-known publicly.
12 We -- as I told you, we made a visit to the plant.
13 I went with Dr. Carlos Carbonera to find out for
14 myself. And then after that time, after I -- I
15 visited the plant, I wrote a report. And then my
16 feelings on the subject were well-known, and
17 anybody who asked me or if any newspaper asked
18 me -- and I don't know if any newspapers did ask
19 me, but I made my views very well-known on the
20 subject.

21 Q. All right. So let's try to get to the end
22 here. There were complaints raised about
23 Agriprocessors's treatment of its workers in *The*
24 *Forward*; is that right?

25 A. That is correct. Very strong allegations,

1 yes, that is true.

2 Q. And you were part of a group or part of a
3 team of people that came to investigate whether
4 those allegations had any basis in fact; is that
5 right?

6 A. I was not part of a team. I went on my own
7 decision to go. And I went with Dr. -- or with Dr.
8 Carbonera. The allegations came out in a newspaper
9 on a Thursday. It was Memorial Day weekend in '06,
10 and we went on a Sunday. On Saturday afternoon, I
11 spoke to Dr. Carbonera. I said, "I need to find
12 out what is going on over there. And, please, Dr.
13 Carbonera, will you please come with me tomorrow
14 morning. I'm going to rent a car." And I decided
15 the proper thing was to first ask Sholom Rubashkin
16 if we could go there. The night -- on Saturday,
17 we're not allowed to use the phone. On Saturday
18 night late, I called him. He was visiting with his
19 family in upstate New York. I said, "Sholom, I
20 want an investigation. I want to find out what is
21 happening, what is going on at the plant. Can we
22 go there tomorrow?" And he said, "We will go there
23 tomorrow with whoever and whenever you want to go.
24 And whatever you want. You can go anywhere in the
25 plant." I wanted Rabbi Allen to come with me. I

1 invited Rabbi Allen to come with me --

2 Q. All right. Let me stop you there. Thank
3 you.

4 A. Okay.

5 Q. So the -- did you publish your findings, so
6 to speak, after this visit?

7 A. Yes, I did. I made -- I made them public. I
8 think -- I think it was printed up in the Jewish
9 Press in New York, but I did certainly publish my
10 findings.

11 Q. And did this cause additional controversy
12 between the opposing -- the people who were
13 criticizing Agriprocessors and the community upon
14 which Sholom and Agriprocessors belonged?

15 A. I have to say, I don't know exactly what
16 you're asking me, but I can tell you from the day I
17 published my findings, not one single person has
18 ever proved that anything I said was not correct.
19 And I said that everything in the paper was
20 falsehood, was malicious falsehood. I mean, that
21 would be the allegation for the most part.

22 Q. Did Agriprocessors remain under the
23 microscope, so to speak, of the Conservative Jews
24 from -- headed by Mr. Allen and *The Forward* and
25 PETA and the union after your investigation?

1 A. Yes, very much so. They made -- they made
2 the -- Rabbi Allen and the group made a -- visited
3 the plant, and it was I -- actually, it was Sholom
4 who gave them permission to come into the plant.
5 And they visited the plant as a group a few months
6 later. I believe that was in August of the same
7 year.

8 MR. BROWN: Nothing further, Your Honor.
9 Thank you very much.

10 THE COURT: Cross-examination?

11 MR. DEEGAN: Briefly, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. DEEGAN:

14 Q. Rabbi, this meeting you had with, I think you
15 said, a group --

16 A. Who am I speaking to, please?

17 Q. I'm Pete Deegan. I'm the Assistant US
18 Attorney, one of them, on the case.

19 A. Okay, okay.

20 Q. I just have a couple questions for you. This
21 meeting --

22 A. All right.

23 Q. This meeting you had with the employees and
24 Dr. Carbonera --

25 A. Yes, yes.

1 Q. -- those employees were actually brought to
2 you and set up sort of like in a conference room?

3 A. We came -- we asked -- it was Heshy
4 Rubashkin; asked to please get -- have employees
5 together. And they had -- I think there was
6 between 20 and 30 employees. Now, from what you're
7 saying, I assume that you're suggesting that they
8 were chosen out. We gave them -- I did not
9 question. I don't speak Spanish. But Dr.
10 Carbonera questioned them very, very, very
11 thoroughly. As we would say in the vernacular, up,
12 down, back and front, sideways and forwards, to
13 find out if they were telling the truth.

14 And then later we went on a plant tour.
15 We walked around the plant. We walked around the
16 town, and we stopped different people. We stopped
17 many people, just as we came -- we met the
18 different Hispanics, who obviously worked in the
19 plant, and spoke to them freely and said, "We're
20 visiting. We'd like to ask you some questions."
21 We just stopped them on the streets.

22 And the people we spoke to in the
23 visitation, we spoke to them, we interrogated them
24 at great lengths, and I took notes at that time.
25 And asked them, "Where did you come from," their

1 background. And I'm used to questioning people and
2 finding out if what they're telling is the truth or
3 if they're speaking under intimidation, and it was
4 very, very obvious, there had been no intimidation
5 whatsoever.

6 Q. Sir, did any of the people that you met on
7 the street indicate whether they were in the
8 country illegally?

9 A. We did not -- that subject was totally,
10 completely never brought up. We did not discuss
11 that subject whatsoever.

12 MR. DEEGAN: All right. No further
13 questions.

14 THE COURT: Anything else, Mr. Brown?

15 MR. BROWN: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. BROWN:

18 Q. This is Mr. Brown again. I have three
19 questions.

20 A. Okay.

21 Q. Do you know who --

22 A. Excuse me, you are Mr. Brown? Okay, go
23 ahead.

24 Q. Mr. Brown. Who is --

25 A. Yes.

1 Q. -- Hekhsher Tzedek? Tzedek? Tzedek?

2 T-Z-E-D-E-K. Do you know who that is?

3 A. Tzedek? Hekhsher Tzedek?

4 Q. Yes.

5 A. Is that what you're saying?

6 Q. I'm trying to.

7 A. That is -- Hekhsher Tzedek, that is a mark
8 that the Conservative movement under Rabbi Allen
9 wanted to make. I don't know if it ever came to
10 fruition or not. They worked very, very hard to
11 work at making a mark which would be called, quote,
12 unquote, a kosher mark, that people could use it,
13 which would indicate that the -- which would
14 indicate that the company producing the product
15 treated the workers fairly, etcetera, etcetera.
16 And I say the word kosher in quotation marks. They
17 worked extremely, extremely hard. And when they
18 promoted kosher Hekhsher Tzedek, they also used the
19 occasion to demote the Agriprocessors.

20 Q. Okay. Second question, at the time that
21 the -- the Allen group was criticizing
22 Agriprocessors, who dominated the kosher production
23 market, the Orthodox or the Conservative Jews?

24 A. The Orthodox did and does dominate the kosher
25 market. And I would say, certainly today,

1 certainly by well over 90 percent the kosher market
2 is so certified and supervised by the Orthodox.

3 Q. And was it believed -- at the time that you
4 came in the wake of the criticism, was -- was there
5 any belief that part of the motivation for the
6 criticism was that the Conservative Jews wanted to
7 get into the certification of the kosher meat
8 business to make money?

9 A. It was certainly my feeling. I don't know
10 how widespread it was. It certainly was and is my
11 feeling. I do not know, I cannot say, that it was
12 in order to make money, but they certainly did and
13 do want to become kosher certifiers, and perhaps
14 other reasons than making money, but they certainly
15 did -- this is my feeling, certainly did and do
16 want, and Agriprocessors was used for that in a
17 negative sense.

18 Q. And, last question, given the criticism and
19 the things that you've testified regarding these
20 outside forces, do you know whether or not Sholom
21 Rubashkin had motive to insure that his employees
22 were treated fairly and in an ethical manner?

23 A. He certainly had motives, but I believe that
24 his prime motive and his main motive and perhaps
25 only motive in treating his workers fairly is

1 because he is a good person and God-fearing. And I
2 believe God-fearing would come first. And from
3 what I know, I can state unequivocally that, to my
4 knowledge -- and I've known Sholom Rubashkin for
5 over 20 years -- he has never, never, ever hurt any
6 human being, certainly not willingly or with any --
7 with any intention whatsoever. He's been good to
8 everybody he knows.

9 MR. BROWN: No further questions, Your
10 Honor.

11 THE COURT: Mr. Deegan, any further
12 questions?

13 MR. DEEGAN: No, Your Honor. Thank you.

14 THE COURT: Thank you, Rabbi. We're
15 going to hang up now. We appreciate your
16 participation.

17 THE WITNESS: Thank you, Your Honor. And
18 God bless you.

19 THE COURT: Thank you.

20 All right. Mr. Cook?

21 MR. COOK: Yes, Your Honor. Our next
22 witness would be Mr. Getzel Rubashkin.

23 THE COURT: Sir, do you want to put your
24 materials down there on the table and -- yeah.
25 Thank you.

1 THE WITNESS: Sure.

2 THE COURT: I'm now going to ask you to
3 affirm an oath.

4 GETZEL RUBASHKIN,
5 called as a witness, being first duly sworn or
6 affirmed, was examined and testified as follows:

7 THE COURT: Please come to the witness
8 stand.

9 Again, I appreciate the lawyers and the
10 witnesses cooperating by speaking into the
11 microphone so that the people in Building A can
12 hear. I understand there are about 30 or 40 that
13 are still up in that room attempting to follow
14 along.

15 DIRECT EXAMINATION

16 BY MR. COOK:

17 Q. Tell us who you are, please.

18 A. My name is Getzel Rubashkin. I am the second
19 child of Sholom Rubashkin, the oldest boy.

20 Q. And what is your educational background?

21 A. I studied in the school in various places as
22 my family moved, but I completed my middle school
23 education in Postville, and went to various
24 rabbinical colleges. I completed my GED recently.

25 Q. And can you add and subtract?

1 A. I can add and subtract, yes.

2 Q. And can you analyze a checking account?

3 A. Yes.

4 Q. And you can add up deposits and withdrawals?

5 A. Yes.

6 Q. Now, was there a period of time where you
7 actually were employed by Agriprocessors?

8 A. Yes. I was employed at Agriprocessors from
9 approximately a year after my marriage, for -- for
10 about a year and a half, approximately.

11 Q. And where did you actually work out of?

12 A. I never really found my niche in the company,
13 and I spent the time that I was there moving from
14 project to project and from location to location.
15 So I spent some time in my father's office, I spent
16 some time in my Uncle Heshy's office, I spent some
17 time in the production floor.

18 Q. So that would be actually in Postville; is
19 that right?

20 A. Yes, yes. The entire time I was employed by
21 Agriprocessors, I was in Postville.

22 Q. And did you actually work on the floor at
23 some point in time?

24 A. I did, yes.

25 Q. Do you know -- were you aware of any policy,

1 written or unwritten, by Agriprocessors's
2 management that would have tolerated the abuse of
3 Hispanic employees by rabbis?

4 A. No, no, I -- no.

5 Q. Did you ever catch whiff of any express or
6 implied permission while you were down on the floor
7 to -- to abuse verbally or physically any of the
8 Hispanic employees?

9 A. No. To the contrary, my observations have
10 always been that they were industrious, all the
11 employees, not just the Hispanic employees. But
12 they were industrious people who worked hard and
13 were voluntarily, you know -- they were -- they
14 were there because they wanted to be there.

15 Q. And from what you knew, having worked from
16 project to project and actually on the floor,
17 would -- would systematic abuse, physical or
18 verbal, of employees be -- would that be beneficial
19 to Agriprocessors?

20 A. No. A happy -- happy workforce is a
21 productive workforce, and I don't -- I have never
22 witnessed any abusive or heard of any abusive
23 incentivization to work or work harder or work --
24 accomplish more.

25 Q. Did you --

1 A. I don't think that would be effective.

2 Q. Do you know how much the line workers were
3 getting paid?

4 A. The -- the Agriprocessors policy, and I --
5 I -- I have -- I heard this numerous times, was
6 always to pay \$1 above minimum wage. And obviously
7 minimum wage changed over the years Agriprocessors
8 was in business, but Agriprocessors had a policy
9 and had a practice of paying starting wages always
10 \$1 above minimum wage. And I actually remember --
11 when the minimum wage went up, I think, to the
12 7.25, I remember the discussions about the need to
13 not only to raise starting wages but to raise wages
14 of other workers as well so they would not feel
15 that their seniority was all of a sudden devalued
16 because new workers were making the same as they
17 were.

18 Q. The minimum wages had caught up with the wage
19 rate that Agriprocessors had been paying, is that
20 what happened?

21 A. I -- I don't remember -- I don't know the
22 exact figures, but, yeah, I guess the minimum wage
23 rate had caught up to what Agriprocessors was
24 paying people that had been there for some time,
25 and they felt that they would not only raise the --

1 and I don't know what actually happened. I just
2 remember the discussion, that --

3 Q. Okay.

4 A. Yeah, sorry.

5 Q. Were you aware of whether or not
6 Agriprocessors offered -- offered each and every
7 employee a health insurance plan?

8 A. Yes, it was my understanding, and I
9 participated in one as well.

10 Q. And was your plan better than ones that any
11 of the other employees could have enlisted in?

12 A. No, and I think I paid the same premiums as
13 well.

14 Q. What was your understanding as to the
15 standard vacation package that was offered to
16 every -- every single employee at the plant?

17 A. I actually don't remember any discussion with
18 me when I joined as to what my vacation package
19 was, and -- but it was my understanding that all
20 workers were entitled to 2 weeks paid vacation.

21 Q. Let's move on. There came a time during the
22 trial in South Dakota where you provided some
23 testimony regarding what you could figure out from
24 Sholom's personal accounts. Do you recall that?

25 A. Yes, I presented a summary of his personal

1 accounts, categorized by expenditures.

2 Q. And you looked at the summary that had been
3 prepared by ICE contractor, certified fraud
4 investigator, Kerry Bolt; is that right?

5 A. Exhibit 114 is the exhibit, I believe, that
6 was primarily used in preparing that analysis.

7 Q. And you're aware the government has
8 resubmitted 114 as a -- the same or almost the same
9 exhibit in the sentencing, is that true?

10 A. I received what I believed to be an updated
11 copy of Exhibit 114, yes.

12 Q. And then in preparation of sentencing, have
13 you -- have you drilled down deeper into any of
14 Sholom's personal accounts?

15 A. Yeah, yes. I did receive information I had
16 not had access to prior to the trial. I also had
17 the opportunity to discuss the numbers in my
18 methodology with a certified accountant, and so I
19 refined my -- my numbers, and I also added
20 substantial numbers. I took some stuff out that I
21 felt I wasn't certain about, and I also reviewed
22 the Government's Exhibit 114.

23 Q. So let's go through it briefly. Did you
24 acquire some additional mortgage information?

25 A. Yes.

1 Q. Let's do it question and answer.

2 A. Sure.

3 Q. What did that consist of?

4 A. That consisted of -- in -- what sparked my
5 interest in it was the assertions made in court
6 documents and repeated in the press that my father
7 paid for his extension with money that they were
8 associating with First Bank or with the financial
9 issues at hand -- or under discussion, so it was my
10 understanding, my recollection, that there had been
11 a mortgage, and I went and recovered all the
12 documents pertaining to that mortgage.

13 Q. All right. And you brought that stuff,
14 didn't you?

15 A. I did, yes. That would be the top folder.

16 Q. The documents relating to this mortgage are
17 in my hand?

18 A. Yes.

19 Q. Okay. So what did you find out regarding
20 this mortgage to build this extension of this maybe
21 the largest home or second largest home in
22 Postville?

23 A. The extension was -- just to correct you
24 slightly, the correction was a -- consisted of a
25 room where my -- where the extended family was able

1 to stay when they came for the Passover holidays
2 and where communal functions often occurred. We
3 did move the -- the dining room did move to that
4 larger room, but that was the intent.

5 The -- the -- I received information by
6 talking to -- by reviewing the documents and
7 talking to the -- who was the -- the man who was at
8 the time the VP and the senior loan officer at
9 Citizens State Bank, that they had advanced some of
10 the smaller amounts to get the construction
11 started, and then rolled that all into one large
12 mortgage payment -- I'm sorry, one large mortgage,
13 of \$320,000, approximately 220 of which went to pay
14 various titling fees and building expenses. The
15 additional \$100,000 was actually reimbursed -- it
16 was actually deposited into Agriprocessors's
17 account.

18 Q. Okay. So when is this -- what is the period
19 of time of this transaction?

20 A. That was in 2007 or -- early 2007.

21 Q. So are you telling me that Sholom got a
22 \$320,000 mortgage on the home, and he plunked
23 100,000 of that into Agriprocessors?

24 A. Yes.

25 Q. So in determining whether or not -- or

1 determining why Agriprocessors is giving him in
2 subsequent years so-called nonpayroll payments,
3 wouldn't we want to try to figure out whether or
4 not some of those payments are to repay this
5 \$100,000 that he loaned to Agriprocessors?

6 A. One of the -- the reason why I got involved
7 in this analysis to begin with was my recognition
8 that the government exhibit failed almost entirely
9 at the time to address any money flowing in the
10 other direction for which the money that they were
11 listing may have been reimbursements. And
12 actually, the updated Exhibit 114 conveniently
13 loses the information about the \$100,000 transfer
14 so now it's entirely devoid of any evidence or any
15 transactions which may explain those nonpayroll
16 deposits as reimbursements, which I would assert
17 that they are.

18 Q. Now, did there come a time where you started
19 to -- taking a look at Sholom's personal credit
20 card expenditures?

21 A. In the course of my analysis and preparation
22 of that -- of that exhibit, I did categorize the
23 expenditures, including credit card payments. Now,
24 I -- I -- I only included the American Express
25 credit card as a business credit card, because that

1 was the only credit card for which I had direct
2 knowledge that it was used primarily or extensively
3 for business, but I am also aware, although I
4 cannot separate the money that the -- that the --
5 that other credit cards were habitually used for
6 nonpersonal expenses for which -- and I'm -- for
7 which Sholom may have been qualified for
8 reimbursement. And I know that there was actually
9 at least one more credit card, I believe it's
10 Citibank, for which Agriprocessors is also a card
11 holder.

12 Q. So if you were -- if you were a certified
13 fraud investigator under ICE contract, would you
14 have wanted to actually have taken these credit
15 card bills and seen what was bought with them to
16 determine whether or not any of these were -- were
17 Agriprocessors-related?

18 A. I'm not a certified accountant, but it's my
19 understanding that, in order to present any
20 picture, you have to present all relevant
21 information. And, of course, in -- in -- in
22 asserting that money was given for no reason at all
23 or -- or for a specified reason, other avenues or
24 other possibilities must be explored, especially
25 since they were obviously aware of money moving in

1 the other direction. They were aware of a \$100,000
2 transfer, which opens the question exactly how much
3 money did move from my father's accounts to Agri's
4 accounts for which this may be reimbursement. So I
5 would think that that would be a very critical
6 avenue to -- to explore and research, and certainly
7 not one where -- where you would remove information
8 that you have. But I would think that even with
9 that \$100,000, it's very, very far from a -- from
10 a -- even an attempt at a comprehensive picture as
11 to what that money might have been, but --

12 Q. Okay. Could have said "yes"?

13 A. Yes.

14 Q. What did you find out with regard to moneys
15 that third-parties loaned to Sholom Rubashkin?
16 What do you know about that?

17 A. This -- I had indirect knowledge, a vague
18 knowledge, for years that my father had often
19 loaned money to Agriprocessors, coming from various
20 sources. This mortgage being one example of that.
21 Other examples include life insurance policies that
22 are listed in my father's financial disclosure to
23 the Probation Office, I believe, as well as over
24 1 -- in excess of \$1.1 million of loans also listed
25 in those documents that -- that were -- that were

1 his personal debt that he took for the benefit of
2 Agriprocessors, for which he would be owed
3 reimbursement at some point.

4 Q. Do you know some of the names of some of the
5 people that, in that 2006, 2007, 2008 period, were
6 loaning money to your father to feed into
7 Agriprocessors to keep it afloat?

8 A. Well, my father's incarceration has made it
9 very difficult for me to have -- to discuss
10 sensitive information with him, since I'm not on
11 the legal team and I don't have privileged
12 conversations. I do know that, for example,
13 \$300,000 loan that is listed in those financial
14 documents, that -- that were listed in those
15 financial documents from Boruch Duchman, was made
16 in mid 2008. I also know that a loan that's listed
17 there as out -- as \$75,000 outstanding was
18 initially a \$100,000 loan that was borrowed by
19 Hillel Alenick. That was also made in mid 2008.

20 Q. Let me stop you there. For the court
21 reporter, can we spell Duchman?

22 A. Yes. Boruch Duchman is B-O-R-U-C-H. Duchman
23 is D-U-C-H-M-A-N. And the other name that I
24 mentioned is Hillel, H-I-L-L-E-L, Alenick,
25 A-L-E-N-I-C-K, I believe.

1 Q. All right. Who else did you identify as
2 third-parties who gave loans to Agriprocessors
3 which would require Sholom to personally pay back?

4 A. Well, it's my understanding that the loans
5 were to Sholom Rubashkin, that they're his personal
6 debt and that he gave them as a loan to
7 Agriprocessors. Other names in that list that
8 is -- that I have not identified but that -- that I
9 had not been aware of but have been identified in
10 that financial disclosure statement include Yaakov
11 Gorst (phonetic). I -- the papers are in your --
12 in your files. I don't remember offhand the other
13 names. And --

14 Q. So is it your testimony that -- is it your
15 testimony that a full and fair analysis of the
16 so-called nonpayroll moneys paid to -- or paid or
17 given to Sholom Rubashkin, that you would have to
18 drill down further to see whether or not these are
19 repayments of the debt?

20 A. Yes, there's -- there's definitely
21 information that would -- that would be needed --
22 needed to establish whether or not there was
23 justified cause for nonpayroll money to be
24 reimbursed to my father.

25 Q. And fourth, are you aware of whether or not

1 your father cashed in value from life insurance
2 policies to lend to Agriprocessors?

3 A. Yes, that is also listed in the financial
4 disclosure document that I had the opportunity to
5 recently review.

6 Q. So who -- to your knowledge, from working at
7 the plant, who at the plant would have been
8 responsible for accurately booking and crediting
9 these so-called nonpayroll payments back to your
10 father?

11 A. I don't know. The accounting department -- I
12 mean, I can tell you the accounting department was,
13 but I think that the -- I think we've seen from a
14 lot of the information here that the accounting was
15 not necessarily the most orderly accounting in the
16 world, but I don't think that that talks to the
17 question about whether those loans were made based
18 on other information.

19 Q. And in addition to these other documents that
20 you acquired, did you look at purported APGEN data
21 from Account Number 0125-26, which was supposedly
22 the Sholom -- Sholom's account receivable account?

23 A. The integrated document? The integration, AP
24 integration, is that what you're referring to?

25 Q. Right, right. Did you look at that?

1 A. I did look at that.

2 Q. Is there any way --

3 A. Yes.

4 Q. -- that you could see any bookings that
5 seemingly corresponded with the transactions that
6 were reflected in both your exhibit at the trial
7 and Exhibit 114?

8 A. No. I received that information too -- too
9 late before this testimony to do a proper analysis
10 and comparison, but I -- again, I don't believe
11 that the accuracy of Agri's books speaks to the
12 question about whether or not these loans actually
13 occurred when they are demonstrated from other
14 reliable sources.

15 Q. Exhibit 114 hypothesizes that during this
16 time period, approximately \$1.5 million nonpayroll
17 flowed into your father's two personal accounts.
18 How much approximately did you find that your
19 father funneled back to Agriprocessors through his
20 CSB and Freedom Bank accounts?

21 A. Well, I wouldn't use the word "funneled
22 back," because I wouldn't -- I wouldn't attempt to
23 understand or to speculate on what was payment for
24 what and what the timeline was, but I think that I
25 have -- I have determined and the -- I have amended

1 my document just to -- to -- and after speaking to
2 the CPA and reviewing the information, I am -- I am
3 confident that \$700,000, approximately, about
4 690-some dollars, 690 -- excuse me, in excess of
5 \$690,000 from those two accounts were made either
6 for business expenses or on behalf of the business,
7 and, therefore, would deserve reimbursement. And
8 in addition, there is listed in the financial
9 disclosure statement in excess of \$1.1 million
10 still due, and that does not -- that doesn't even
11 include money that was paid. I know that, for
12 example, the Hillel Alenick loan, which is listed
13 as 75,000 in that document, was really \$100,000
14 given to Agriprocessors, so that would -- so that
15 is in excess of \$1.1 million there, and 60 -- in
16 excess of 690,000 from the bank accounts. And then
17 the additional information about the New York --
18 the New York Life, I don't remember offhand what
19 the number was, but it was, I think, in excess of
20 500,000 and maybe 700,000. I don't have the
21 numbers in front of me.

22 Q. How much -- how much do you hypothesize of
23 that 1.5 million supposedly nonpayroll went to
24 charitable organizations?

25 A. I -- I had identified on those -- in those --

1 I identified in those -- the document that I
2 prepared -- again, I don't have numbers in front of
3 me. I think it was 111,000 out of Freedom and a
4 couple hundred thousand out of -- out of Citizens
5 State Bank. I would be able to give you the number
6 if I had the document in front of me, but I would
7 not associate those with the money coming in from
8 Agriprocessors. I would just assert that those
9 moneys were spent on behalf of Agriprocessors, and
10 they need to be considered as potential claims for
11 reimbursement for which that 114 -- that the
12 Exhibit 114 could be applied or connected to.

13 Q. Do you know what the Colel Chabad is?

14 A. Colel Chabad, yes. The answer is yes.

15 Q. What is it?

16 A. It is a charitable organization operating
17 primarily in Israel, which supports the needy,
18 especially widows and orphans, but also it operates
19 soup kitchens and low -- you know, low cost
20 supermarkets where people can shop, and similar
21 activities.

22 MR. BROWN: I have no further questions,
23 Your Honor, at this time. Thank you very much.

24 THE COURT: Cross-examination,
25 Mr. Deegan?

1 MR. DEEGAN: Thank you very much, Your
2 Honor.

3 CROSS-EXAMINATION

4 BY MR. DEEGAN:

5 Q. First of all, I guess I want to talk about
6 the remodel -- well, let me just back up for a
7 second. You don't have any sort of accounting
8 degree or background; is that correct?

9 A. No, but I can add and subtract.

10 Q. All right. And you said, I think, in your
11 direct testimony that there's a lot of information
12 you weren't able to get, such as personal credit
13 card amounts; is that correct?

14 A. Any information that I listed as business-
15 related was information that I was able to verify;
16 and anything else, I left out of the document.

17 Q. But bottom line is, you didn't look at other
18 personal credit card accounts of your father's that
19 were covered by Agri money to see where those
20 moneys may have been spent; is that correct?

21 A. I don't know which credit card you are
22 associating with the Agri money. I think that
23 we -- by the trial, the -- the -- there was a
24 column in the original Exhibit 114 which speculated
25 what that money was for, and I think that was

1 removed, so it was my understanding that we were
2 not associating that money with specific payments.

3 Q. And that's fine. Let's talk about 114 for a
4 minute.

5 A. Sure.

6 Q. And 114 was revised several times because the
7 defense objected and wanted more information
8 removed, do you recall that?

9 A. Not that I was involved or aware of, no.

10 Q. Well, the bottom line is, the same 114 that
11 the Court has in front of it for sentencing is the
12 same 114 that was admitted finally, over the
13 defense's objection but admitted at trial?

14 A. Okay.

15 Q. All right. So when you say "revised" 114,
16 you're not talking about a different one than what
17 was admitted at trial?

18 A. No. I'm just calling attention to the fact
19 that the 100,000 was -- transfer was known by
20 whoever drafted 114 and it was consciously removed.

21 Q. Very well. Let's talk about the mortgage.
22 At some point, a \$320,000 mortgage was obtained
23 based upon improvements to your house -- to your
24 father's house?

25 A. Yes, for the purposes of improvements, yes.

1 Q. And there would have been a remodel to the
2 kitchen; is that correct?

3 A. Yeah, I -- I don't know what money went for
4 what, but there was remodeling done to the kitchen,
5 yes.

6 Q. All new appliances, correct?

7 A. Yes.

8 Q. And remodel of a master bedroom?

9 A. I -- an access door was created. I don't
10 know if that qualifies as remodeling, but there was
11 a deck and two -- or a wall was removed and a door
12 was added.

13 Q. And there was some sort of addition put on
14 the back; is that correct?

15 A. Yes, that was what the mortgage was for.

16 Q. And what happened was, money was taken out of
17 personal bank accounts and checks were written and
18 then backfilled with Agri money while the
19 construction was going on, isn't that correct?

20 A. I -- I have documents that -- that -- that
21 clearly cover the personal check. I only
22 identified a couple. The personal -- the main one,
23 the \$70,000 UBC Waukon check that was -- that
24 covered the milestone payment, the initial
25 milestone payment, was -- was -- a \$90,000 loan

1 from the bank was filed on that very same day, so I
2 don't know on what basis you're connecting the Agri
3 checks to that money, but --

4 Q. Well, if you look at the detail in your
5 analysis, there's, for instance, money that went to
6 a painting company, correct?

7 A. Out of a personal checking account, yes.

8 Q. Yeah. And there was money for kitchen
9 appliances, correct?

10 A. I assume so. I don't remember all the line
11 items, but any personal expenses would have been
12 out of the personal checking, I imagine.

13 Q. Right. And you're aware that there was
14 testimony at trial that those personal accounts
15 would be at zero or close to zero and then Agri --
16 or your father would just cause Agri money to just
17 backfill the account so those -- those checks were
18 covered, right?

19 A. I was sequestered as a witness, so I don't
20 know the details of the court -- of the testimony,
21 but what I'm saying is that that money, there's --
22 there's grounds, substantial grounds, to assume
23 that that money was legitimately owed by
24 Agriprocessors to Sholom Rubashkin.

25 Q. But it was after the fact or substantially

1 down the road on the construction that the mortgage
2 was obtained, right?

3 A. I have a letter, a notarized letter. I don't
4 know if the lawyer wants to admit that into the
5 record, but I have a notarized letter describing
6 the -- the timeline there, about how that happened.

7 Q. And then your father did, then, take \$100,000
8 from the mortgage proceeds, the loan proceeds, and
9 put it back into Agri, because of all the money
10 that had been taken out over the course of the
11 construction, right?

12 A. No, no. I -- again, I have documents that
13 can show that all the construction payments were
14 covered by the loan, by advance loan, and then was
15 subsequently repaid with this -- with this large
16 mortgage. It also repaid an outstanding, I think,
17 \$75,000 on a loan from 2001 or 2004. And then
18 the -- excuse me, the change was then deposited in
19 Agriprocessors. And I have, as I said, a letter
20 from the loan officer testi -- or I don't know if
21 this is called testifying, but a notarized letter
22 asserting that that was the -- the series of
23 events.

24 Q. And your hypothesis that your father put over
25 a million dollars back into Agriprocessors, that's

1 based at least in part upon what you call personal
2 loans that he was responsible for from other people
3 that went to Agriprocessors, correct?

4 A. I -- I -- I don't want to use the word "put
5 back," because that is making the assumption that
6 money was taken that had to be returned. I -- I'm
7 looking at it from the perspective that money was
8 constantly -- and this is also arbitrarily 2007,
9 2008, over the 20-year life of the company. My
10 assertion is that -- and I'm not making assertions
11 about what was reimbursement for what, but I'm just
12 pointing out that there's a large sum of money that
13 was deposited by my father, from money that was
14 rightfully his, that was deposited into those bank
15 accounts, and those must be considered before money
16 can be said to have been unjustifiably given to
17 him.

18 Q. But just to be clear, when you say the money
19 is rightfully his, it's other peoples money that he
20 obtained --

21 A. That they --

22 Q. -- to put into Agriprocessors?

23 A. Yes, they lent to him and they're holding him
24 personally responsible, so that would be personal
25 money that he has to pay back in whatever way. And

1 then he deposited that in Agri as a loan, and then
2 he would receive his money back from Agri, and
3 then -- and then give it to the people to whom he
4 was personally responsible for, and so that --

5 Q. And your understanding is that your father
6 has not paid all of those loans that you attribute
7 to money his -- of his putting into the company,
8 right?

9 A. Yeah. I mean, his financial disclosure sheet
10 does list in excess of \$1 million of money that
11 was -- that is personal debt that is outstanding on
12 those personal loans that -- that were deposited
13 into Agri.

14 Q. So it's really -- someone could look at that
15 though and say, "Well, that's really Agri debt,"
16 right?

17 A. Well, if Agri is not being held responsible,
18 I don't see how you could say that though.

19 Q. Now, let's talk about Colel Chabad real
20 quickly.

21 A. Sure.

22 Q. In 2007 did you -- did your analysis show
23 approximately \$2 million going to -- from Colel
24 Chabad to Agriprocessors in the form of loans?

25 A. I was not privy to any of the Agriprocessors

1 bank accounts, and I don't think it's relevant to
2 the point that I am making.

3 Q. You -- wait a minute, didn't you characterize
4 the payments to Colel Chabad as charitable
5 donations?

6 A. That is my understanding. Again, even if you
7 qualify that as business -- I think we discussed
8 this at the trial -- my point still stands.

9 Q. All right. But you wouldn't dispute though
10 that Colel Chabad provided millions of dollars to
11 Agriprocessors in the form of loans, so at least
12 some of the money going back could at least be
13 considered repayment on the loans, right?

14 A. Which makes the point, that if he's -- if he
15 is repaying Colel Chabad on behalf of
16 Agriprocessors, that would be a legitimate cause
17 for him to turn to Agriprocessors and say, "Well, I
18 paid Colel Chabad \$100,000 on your behalf and I
19 need to be made whole, so I need that \$100,000 from
20 Agri," because it was a legitimate business expense
21 that deserves reimbursement. So that's why I feel
22 that if it was charity on behalf of the company, or
23 if it was laying out money for repayment of a loan
24 on behalf of the company, that those are -- they're
25 equally valid justifications for reimbursement that

1 have to be considered before any assertions can be
2 made that money was deposited unjustifiably.

3 Q. And were you aware of another million dollars
4 from Colel Chabad to your father and your
5 grandfather labeled as a loan on May 31, 2007?

6 A. No, I have no knowledge of that. If -- if I
7 can add, I have no knowledge of that -- that
8 transaction, but I think, even if you take out any
9 Colel Chabad checks, which -- actually, my father
10 had a -- a habit of writing significant Jewish
11 dates on his charity checks to sort of associate
12 that good deed with a significant day, whether it
13 was a personally significant day, like his birthday
14 or his children's birthday or a holiday, that
15 pattern is present on at least some, if -- on at
16 least some -- I haven't had a chance to actually
17 count, but that pattern is present on Colel Chabad
18 checks, which lends support to the assertion that
19 at least some of them or a significant amount of
20 them were charity checks. But even if you would
21 discount all the Colel Chabad checks that I
22 included in my assessment, I think the -- the --
23 the question raised by the loans and by the life
24 insurance and by the other business expenses is
25 significant enough that it warrants a second look

1 at money that may have passed from Sholom to Agri.
2 Even if you're not going to accept the conclusion,
3 it at least raises a -- 1.4 or \$1.5 million that
4 was -- that went in the other direction requires
5 further analysis before any -- any assertions can
6 be made that this money was used, that this money
7 was not his and that it was taken and, therefore,
8 can be traced back to the bank.

9 Q. Who is the accountant that you consulted
10 with?

11 A. Abe Roth, who I believe will be testifying
12 later today as well.

13 MR. DEEGAN: No further questions, Your
14 Honor.

15 THE COURT: Anything further, Mr. Brown?

16 MR. BROWN: Yes, please, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. BROWN:

19 Q. Getzel, can you explain to us briefly why, if
20 these third-parties are loaning money that's
21 ultimately destined to Agriprocessors, that -- that
22 they're giving it to your father?

23 A. Well, when a person makes the loan, he makes
24 the loan based on his willingness to -- I'm -- let
25 me put this right. A person makes a loan to

1 somebody who he wants to make a loan to. No one is
2 obligated to make a loan. It's a voluntary thing.
3 And often a person will have no bond or -- or
4 relationship with a corporate entity and would not
5 be motivated to make a loan, but if a personal
6 friend who happened to be associated with that
7 corporate entity asked him for a loan, for a
8 personal loan that he would be personally
9 responsible, that person might now be motivated to
10 say: Yes, I -- I'm not interested in investing in
11 this company or lending this company money, but,
12 Mr. Rubashkin, I -- I would -- either based on our
13 relationship, I would trust you, or I would -- or I
14 would be motivated to provide you with money that
15 you like. Whatever you want to do with it is your
16 business, and I just expect the money back from
17 you.

18 Q. All right. Knowing what you've -- knowing
19 all the financial data that you have looked at,
20 having worked at the plant, did you understand that
21 the plant and its purpose was important to your
22 grandfather and your father?

23 A. It was his life's work.

24 Q. And having brought in hundreds of thousands,
25 perhaps millions of dollars, of loans from

1 third-parties that he deemed a personal loan to
2 himself, do you think that put him under any
3 pressure?

4 A. Well, yeah, his -- his capability of
5 procuring reimbursement directly impacted his
6 ability to live up to his personal obligations, so
7 any -- yes, I mean, you'd -- you would have
8 pressure to make sure that the money is there so
9 that you can get reimbursed so that you can
10 reimburse the people to whom you have obligated
11 yourself.

12 Q. Do you think -- do you think -- knowing your
13 father, knowing his life's work, do you think it
14 would have made it easy for him, when he went to
15 Israel in December of 2007, to just say "I quit"?

16 A. I -- I -- I -- my father is not a quitter, in
17 general, and I have a hard time picturing him
18 walking away from if not his life's passion at
19 least his life's work.

20 MR. BROWN: Your Honor, may I approach?

21 Q. I want to show you --

22 THE COURT: Yes.

23 Q. -- what I have premarked as Exhibit 11132.
24 Is this the notarized letter that you were
25 referring to from the bankers?

1 A. Yes, this is a letter from Terry Johnson,
2 which details the series of events that led up to
3 the final \$320,000 mortgage.

4 Q. Mr. Rubashkin, can you look through --

5 THE COURT: Excuse me, Mr. Brown, can I
6 be a pain and ask you to speak into a microphone
7 for the people in Building A? Thank you.

8 MR. BROWN: You're not a pain, Your
9 Honor.

10 Q. Mr. Rubashkin, can you paw through some of
11 these Freedom Bank and look for some Colel Chabad
12 checks where you believe there's some kind of
13 special date notation on there?

14 A. I can. If I remember right -- just go
15 through -- if I remember correctly, most of the
16 Colel Chabad checks were -- or many of them were in
17 Citizens State Bank, and I actually marked a paper
18 with a sticky note that actually had some of those
19 dates. You may have that in your stack, but I'll
20 look through this.

21 THE COURT: Mr. Brown, would this be a
22 good time for us to take our morning break while he
23 does that task?

24 MR. BROWN: Yes, Your Honor. Thank you
25 very much.

1 THE COURT: All right. We will be at
2 recess until 10 minutes after 10. And we'll start
3 promptly at that time.

4 (Whereupon, a brief recess was taken.)

5 THE COURT: We're on the record again in
6 United States of America versus Sholom Rubashkin,
7 Case Number 8-1324.

8 Just a housekeeping thing. In court
9 yesterday, I mentioned that the Marshal's Service
10 would be happy to set up a viewing of the
11 videotapes that we didn't take court time to view
12 so that Mr. Rubashkin could view what his attorneys
13 had submitted. The marshals did that. It was my
14 understanding from Marshal Junker that
15 Mr. Rubashkin was not happy that he was not in a
16 private conference room with his attorneys to view
17 it. But I wanted to make the record that that was
18 offered to him.

19 Mr. Cook?

20 MR. COOK: Yes, Your Honor. It's not so
21 much a private room as the facility, which is very
22 fine over here, has the --

23 THE COURT: Mesh.

24 MR. COOK: -- mesh screen. And he said
25 it was difficult for him to see the videos, and so

1 he was asking if there was another place where he
2 could watch the videos. I'm happy to be locked in
3 the same room with him that doesn't have the
4 screen, but --

5 THE COURT: Yeah, the marshal did put
6 himself in the position of Mr. Rubashkin, and he
7 reported to me that it could be viewed, not like a
8 sharp picture on a super television set, but the
9 audio and the visual were able to be viewed. And I
10 just wanted to make that of record, since there had
11 been some dissatisfaction with not being in a
12 conference room with his attorneys when he viewed
13 the videos that his attorneys submitted to the
14 Court for consideration.

15 All right. We're ready now to continue
16 with the witness on the stand. We are ready to
17 continue with the direct.

18 MR. BROWN: Thank you, Your Honor. At
19 this time, I would like to offer what I had marked
20 as Exhibit 11132, the notarized statement from
21 Terry Johnson from Freedom and Citizens State Bank.

22 THE COURT: All right.

23 MR. DEEGAN: No objection.

24 THE COURT: Would you have a copy or
25 could you have a copy for me at some point? If you

1 don't have -- if you need that now, you can give it
2 to me later.

3 MR. BROWN: I don't need it now, Your
4 Honor.

5 THE COURT: Okay. Thanks so much.

6 (Whereupon, Exhibit 11132 was received.)

7 Q. And then, Mr. Rubashkin, did you call out
8 during the break from some of the bank account
9 information some copies of canceled check pages?

10 A. Well, not canceled check pages but cashed
11 check pages, yes.

12 Q. And these are checks of -- are these incoming
13 or outgoing checks?

14 A. Outgoing, checks made from the personal
15 checking account.

16 Q. Did you highlight specific checks and
17 sections in the memo area?

18 A. Yes.

19 Q. And you pulled out 4 pages, approximately?

20 A. Yeah, 3 or 4.

21 MR. BROWN: Your Honor, I'd like to have
22 what I have marked as Exhibit 11134, 4 pages,
23 admitted at this time.

24 MR. DEEGAN: No objection.

25 THE COURT: Received.

1 (Whereupon, Exhibit 11134 was received.)

2 Q. I'm going to show you the first page of
3 Exhibit 1134 [sic]. Do you see a notation for
4 Colel Chabad?

5 A. Yes.

6 Q. And in the memo section, there's some -- see
7 if I can --

8 A. It's Hebrew, Hebrew scrip. I can see it
9 clear enough.

10 THE COURT: You should be able to see it
11 on your monitor too.

12 THE WITNESS: Yeah, thank you.

13 Q. Do you know what it says?

14 A. It's a date. It's tsvelf Sivan, in the
15 Jewish calendar, 12th day of Sivan, which is the
16 last of the celebratory days associated with the
17 holiday of the Giving of the Torah, so it's a
18 significant Jewish date.

19 Q. And then you see the second -- the next check
20 on the same line, Check Number 7750, they have some
21 other kind of notation. Do you know what that --

22 A. Yes, that's a check to Yad L'Yeled Meyuchad,
23 which is an organization which helps disability --
24 the disabled -- children with disabilities and
25 mental development issues. And the notation is

1 Rosh Chodesh Sivan, which is the first day of the
2 month of -- the first day of the month is always a
3 semi holiday and a special day in the Jewish
4 calendar.

5 Q. All right. Turning to the second page, we
6 have some more instances where the -- there's
7 Hebrew in the notation line.

8 A. Yes. Again, those are non-Colel Chabad
9 charities. And one is -- the second one from the
10 top there is Rosh Chodesh Adar, the first day of
11 the month of Adar. The one in the second column,
12 third from the top, is the 15th day of Shevat. The
13 middle -- the middle day of the month is -- is a
14 significant date in any Jewish month, because that
15 is the -- the date when the moon is full. And the
16 moon is associated -- the Jewish people are
17 associated with the moon. We count by the moon.
18 And that's a special date. And the check in the
19 top left, just not to gloss over it, is -- it
20 doesn't -- it's not the same pattern I started
21 highlighting, so I'll just explain what it says.
22 It just -- it's a blessing to the recipient of
23 charity, that you have success in spiritual and
24 material matters.

25 Q. So these are the kind of notations you put on

1 your check to the IRS; is that right?

2 A. No.

3 MR. BROWN: Your Honor, I have nothing
4 further at this time.

5 THE COURT: All right. Thank you, sir.

6 Mr. Deegan?

7 MR. DEEGAN: Yeah, a few follow-up
8 questions.

9 THE WITNESS: Sure.

10 RE-CROSS-EXAMINATION

11 BY MR. DEEGAN:

12 Q. Looking a little more at this 11134 --

13 A. Can I see it? Sorry.

14 Q. -- third page, upper right, there's a Colel
15 Chabad check; is that right?

16 A. Yes.

17 Q. There's some sort of an account number in the
18 bottom?

19 A. There is some sort of identification number,
20 and I did not highlight that because I -- part of
21 it is illegible. It may be a date. It may not be
22 a date. I just -- it's just illegible to me.

23 Q. Okay. And that's a check in the amount of
24 about \$1,800?

25 A. Yes. That is actually a significant number.

1 Jewish people, the word Chai, which is life, is the
2 18th, so charity is often given in multiples of 18,
3 so that is 1 indication that that might be charity,
4 but I wouldn't assert -- I mean, I would -- I would
5 assume that it is a charity, but not based on that
6 pattern that we discussed earlier.

7 Q. So if there's a number of checks for \$1,800
8 with what appears to be an account number on it,
9 you're assuming that's charity?

10 A. Again, I -- I -- based on my assessment, I
11 would -- I would categorize that as charity, but I
12 would note that I'm not -- I'm not married to that
13 assessment. If you want to classify that as
14 business, I still think it makes my point. And my
15 testimony doesn't talk to the fact that my father
16 is a charitable person. I don't think any checking
17 account can do justice to that. I'm just -- my
18 testimony speaks to whether those -- those checks
19 are personal or possibly justified for
20 reimbursement in both charity or repayment of a
21 loan. I feel that makes that point.

22 Q. Okay. Now I want to touch again on this
23 money that was, you say, loans from other people --

24 A. Yes.

25 Q. -- that went to Agriprocessors --

1 A. Yes.

2 Q. -- but through your father.

3 A. Uh-huh.

4 Q. Is that a fair characterization of what
5 you're talking about?

6 A. With the emphasis on "through my father"
7 or -- I would just stress that that is, for all
8 intents and purposes, a personal loan that was
9 loaned to Agriprocessors as opposed to a loan to
10 Agriprocessors that happened to go through my
11 father.

12 Q. But the bottom line is, the money is going to
13 Agriprocessors and is going to be paid back by the
14 company, either through your father or some other
15 way. Is that fair to say?

16 A. Well, it's -- my father has the -- has the
17 responsibility to pay it, so I would imagine that
18 it would go through my father. My father's, quote,
19 unquote, I guess if you want to look at it that
20 way -- well, I don't know. Brokers don't really
21 work that way, I guess, but the person that made
22 the loan obviously did not want to make the loan to
23 the corporate entity but felt -- he was motivated
24 to make the loan to my father, and he was expecting
25 payment from my father, so I don't think it was

1 unusual that my father would pay it back and then
2 be reimbursed.

3 Q. But the bottom line is this, these are loans
4 that are being solicited by your father for the
5 business during the same time that he is defrauding
6 his primary lender, First Bank, isn't that correct?

7 A. The loan -- I will -- I think that there's a
8 long history of those loans, but possibly some of
9 those loans are in the time in question where the
10 invoices in question were generated, I assume.

11 Q. And at the same time, he's got a workforce
12 that's -- the majority of which is undocumented,
13 which you'd agree puts the company in a perilous
14 position, isn't that correct?

15 A. Well, for the sake of argument, yes.

16 Q. All right. And at the same time he's going
17 to these other folks and trying to get them to
18 essentially invest or send more money to this
19 company that's committing fraud and alien
20 harboring?

21 A. Well, no, because he's taking the personal
22 responsibility -- I mean, he's ultimately holding
23 the bag. And my mother is the one that is fielding
24 the calls from these people that want their money
25 back, whether it's credit cards or individuals.

1 So, yes, it was for the purposes of Agriprocessors,
2 and the lenders may have been aware of that or they
3 may not have been aware of that. But, ultimately,
4 my father's the -- the one who -- who owes the
5 debt, so -- so I don't see how that can be
6 interpreted as, you know, money that went from
7 these people to Agri or, I mean, it -- ultimately,
8 it makes the point that these moneys that were
9 paid -- these loans that were made to Agri justify
10 reimbursement from Agri, and that has to be
11 considered.

12 Q. Now, obviously, you're the defendant's son
13 and you've got an interest in helping him out
14 however you can, isn't that correct?

15 A. Well, yeah. I don't want him to sit in
16 prison for the rest of his life.

17 Q. All right. Shortly after the raid, you took
18 some actions which you thought were going to help
19 your father, isn't that correct?

20 A. Are you referring to the website?

21 Q. Well, I wasn't referring to that, but I was
22 going to later, so let's talk about the website
23 now.

24 MR. BROWN: May I interpose an objection?
25 This is outside the scope of redirect, Your Honor.

1 MR. COOK: Microphone.

2 THE COURT: I think that this is
3 appropriate. This -- the Rules of Evidence don't
4 apply, and I've accepted a lot of things during
5 this proceeding that maybe were not right on point,
6 but certainly it goes to the interest of this
7 witness and I'll allow it.

8 MR. BROWN: All right. Thank you, Your
9 Honor.

10 Q. And just to get right to it, I'm going to
11 mark as 5522 a news article which talks about this
12 website issue.

13 A. Yes.

14 Q. Are you familiar with it?

15 A. I'm happy to talk about that.

16 Q. Okay.

17 THE COURT: Thank you.

18 Q. And just to try to get down to it as quickly
19 as we can --

20 A. Yes.

21 Q. -- shortly after the raid, you started a
22 website which you called PostvilleVoices.com that
23 was held out as a grassroots organization to defend
24 Agriprocessors, isn't that correct?

25 A. That's not entirely correct. The website was

1 created by myself and some friends. That's my --
2 my livelihood now. I develop websites, so I have
3 the expertise. And I had been hearing around town
4 dissatisfaction with the media coverage of
5 everything, and people felt like they wanted to
6 have a voice. So it was created not to make
7 editorial comment, even though ultimately there
8 were some postings that were written by myself or
9 by others that did opinionize -- or editorialize.
10 But the purpose of the website, and which I believe
11 it -- it -- it filled accurately and honestly, was
12 to provide a voice to the numerous people that
13 spoke either through video or written word, people
14 that had firsthand information that wanted to share
15 that. I don't -- that was the essential core, and
16 I followed it up with AP in an attempt to get it --
17 I -- an attempt to get this corrected, which was
18 ultimately unsuccessful, but I -- there was no
19 hiding going on. My -- my involvement was open
20 knowledge in the community. I volunteered that
21 information to a -- a critic of the plant, who
22 worked at the -- who ran the Postville radio
23 station, and solicited his involvement. There was
24 no deception whatsoever. This -- this -- can I say
25 just one more thing? This conversation that --

1 that this was based on happened 6 months before.
2 It was right when the website had -- had been
3 launched, the reporter who wrote this letter, I
4 believe, spoke to the radio person. He knew about
5 it right away. There was no 6-month, you know,
6 uncovering of something that was hidden for
7 6 months. It was open knowledge. He chose to run
8 it 6 months -- or the organization chose to hold it
9 6 months later, but there was no dishonesty, and I
10 don't believe that there was anything wrong with
11 those actions at all.

12 Q. Well, first of all, I'm going to ask you to
13 try to answer my question.

14 A. I'm sorry.

15 Q. You'll get an opportunity to give some
16 follow-up answers if you are asked additional
17 questions, but we really have to go on here.

18 A. I'm sorry. I'm sorry.

19 Q. Bottom line is, this was -- it was touted as
20 Postville Voices, so it really was supposed to be
21 folks that were editorializing about the Postville
22 situation, isn't that correct?

23 A. It was supposed to be a place where Postville
24 Voices could be posted, and that's what it was.

25 Q. And it was your voice?

1 A. No, no.

2 Q. Well, in part it was your voice because you
3 posted stuff on there?

4 A. Well, there was stuff that was posted not as
5 Postville Voices but as editorial comment on media
6 coverage, but that was simply supplement to
7 perfectly valid grassroots voices of local community
8 members who -- who wanted to and did participate.

9 Q. And when you were sort of called out on this,
10 you -- you said, in hindsight, you should have
11 attached your name to the site?

12 A. Well, in foresight --

13 Q. Excuse me, did you say that? Did you say
14 that?

15 A. That was cherry-picked out of a conversation.

16 Q. And did you also say, "I do see now in
17 retrospect that it could look deceptive"?

18 A. That was also cherry-picked out of a
19 conversation. I can provide the context if you'd
20 like.

21 MR. DEEGAN: Your Honor, I'd move 5522
22 into evidence.

23 THE COURT: Any objection?

24 MR. BROWN: No, Your Honor.

25 THE COURT: All right. This -- the copy

1 I have -- oh, it doesn't have a mark on it. 5522,
2 okay. Thanks. It's received.

3 (Whereupon, Exhibit 5522 was received.)

4 Q. And just real briefly -- and this is where I
5 was going before --

6 A. Okay.

7 Q. -- but you actually made some statements to
8 the press shortly after the raid in the spring of
9 2008, isn't that correct? Yes or no.

10 A. During the rally, yes, if that's what you're
11 referring to.

12 Q. And among other things that you said was "The
13 high number of illegal people who were working here
14 is more a testimony to the quality of their deceit
15 of their papers," and you said the company didn't
16 criticize immigration authorities for the raid.
17 Isn't that what you said?

18 A. I -- I personally said I don't criticize them
19 for doing what they felt was correct, although I
20 disagreed.

21 Q. Well, you said, "Obviously" -- and this is
22 another quote, "Obviously, some of the people here
23 were presenting false documents immigration
24 authorities somehow picked up, and they did what
25 they're supposed to do. They came here and picked

1 them up. God bless them for it." Isn't that a
2 quote from you?

3 A. That is a quote from me.

4 Q. And there you are criticizing the use of fake
5 documents --

6 A. Yes.

7 Q. -- at Agriprocessors, isn't that correct?

8 A. Yes.

9 MR. DEEGAN: Okay. No further questions.

10 THE COURT: Anything else for this
11 witness?

12 MR. BROWN: Yes, Your Honor.

13 THE COURT: All right.

14 REDIRECT EXAMINATION

15 BY MR. BROWN:

16 Q. When you were creating this grassroots
17 website for people from Postville, did you
18 understand the questions that you were getting from
19 Mr. Deegan to mean that non-Jew grassrooters --

20 A. I understood that he's insinuating that it
21 was not grassroots, that it was myself, generated
22 by myself, and I strongly protest that
23 characterization.

24 Q. I mean, you lived in Postville at this time,
25 right?

1 A. For 10 years, I think, by that point.

2 Q. Did the Jews have roots there?

3 A. Yes.

4 Q. And is that commonly referred to as
5 grassroots people?

6 A. Common people from the community, yes.

7 Q. So you weren't trying to represent that you
8 were creating a website for -- that was for
9 grassroot non-Jews in the Postville area to comment
10 on what happened at the plant and the raid? You
11 weren't creating that facade, were you?

12 MR. DEEGAN: Your Honor, I'm going to
13 object to the characterization that this has
14 anything to do with religion. I think this is
15 argumentative. And, Your Honor, my -- my -- the
16 record can speak for itself, but I think
17 Mr. Brown's making a suggestion that is absolutely
18 unfair.

19 MR. BROWN: That's the interpretation I
20 received, Your Honor. I'm just trying to make sure
21 that that's not what this is all about.

22 THE COURT: All right. I'll allow it.
23 You may answer, sir. Do you remember the question?

24 THE WITNESS: I'm -- I'm working on it.

25 THE COURT: We can have it repeated.

1 THE WITNESS: Okay, please.

2 THE COURT: Ms. Murray, would you mind
3 reading that back, please.

4 (Whereupon, the requested portion of the
5 record was read by the court reporter.)

6 A. I think what -- what -- what Monty is trying
7 to -- to say is that I -- I qualify as grassroots
8 as well, and I -- I think that there's no -- I was
9 grassroots. There were local community members of
10 all stripes. There were Jews. There were
11 non-Jews. They had their voice. There was not --
12 those voices were not edited when -- when possible.
13 When they were edited to make them small enough,
14 let's say, on video, they were returned to the
15 original -- to the author of the video or the
16 person in the video to confirm that that was the
17 message that they wanted to -- there was a big
18 effort not to editorialize the actual voices of the
19 people. And, yes, I think I'm -- I'm allowed a
20 voice in the discussion as well, but I don't think
21 that it has to be characterized as my grassroots
22 website, my thoughts, because that's not what it
23 was, and I don't think I have to concede that
24 point. I think it was for the people. It was by
25 the people. Yes, I did write editorials that were

1 clearly marked, that were clearly obvious that they
2 were editorials. This was not the Postville Voices
3 that was portrayed in the About Us section. It was
4 clearly described. I -- I -- it was -- clearly
5 depicted the feeling that this -- that this site
6 was born out of, the common complaints that I was
7 hearing, and that this was a site that we were
8 setting up. And I was not at liberty to -- to put
9 my ID on the site, because the -- the plant
10 management felt that -- that -- that they didn't
11 want to be -- they didn't want -- you know, there
12 was legal issues and they didn't want Rubashkin to
13 be involved in it, and I felt that I was just
14 acting as a conduit, and it wasn't critical. The
15 site could go on without my name. And some people
16 latched onto that and argued that I was being
17 deceptive, when I was clear and up front from the
18 beginning with all the local critics --

19 Q. All right.

20 A. I'm sorry, go ahead.

21 Q. Anything else that you want to say about the
22 website that you haven't said?

23 A. I just want to say thank you for giving me
24 the opportunity to bring it up in court, because I
25 was pretty upset about the characterization.

1 Q. I can tell that.

2 MR. BROWN: No further questions.

3 MR. DEEGAN: No further questions, Your
4 Honor.

5 THE COURT: Thank you. You may step
6 down.

7 At this time, we're going to take a break
8 from the evidence and allow the United States
9 Attorney's Office, which is their obligation by
10 statute, to permit any victims to make a victim
11 statement in court. These are not received under
12 oath, and I'm ready to receive any victim
13 statements.

14 MR. WILLIAMS: Thank you, Your Honor.
15 First will be Mr. Dean.

16 THE COURT: Hello, Mr. Dean.

17 MR. DEAN: Good morning.

18 THE COURT: Good morning. This is an
19 opportunity for you to express yourself to the
20 Court about this sentencing proceeding and this
21 case, and you may proceed, sir. Would you please
22 start by just stating your name.

23 MR. DEAN: Ronald Dean, co-owner of the
24 Waverly Sales Company.

25 THE COURT: All right. Proceed, please.

1 MR. DEAN: And we run an auction market
2 there that sells livestock. And we have several
3 buyers that come and buy cattle at our sale, and
4 Agriprocessors was one of them. And they bought
5 there probably a good 15 years. Several years they
6 bought cattle there. And we got took for a lot of
7 money when they had trouble and went under. And we
8 were victims by it. Several barns were. Not just
9 ours, but several sales barns were. And a lot of
10 people that sold cattle private to them were also
11 victims.

12 On the money, if we would not have gotten
13 the money allowed to us from our bank -- we had to
14 borrow the money from the bank. It was
15 194,000-some dollars, is what it was that we were
16 taken for in the cattle that we never got paid for.
17 But they got the cattle, you know. So we went to
18 the bank and, luckily, a bank loaned us the money
19 to keep going, otherwise we would have been closed,
20 and been out several jobs for people. And we lost
21 trust in a lot of packing companies because of this
22 happening; not just us, but a lot of the public
23 have too. And when -- we had to borrow the money
24 to go on with it. And if we wouldn't have had the
25 money to borrow -- not just because we would have

1 been out all that money and wouldn't have had the
2 money to operate, but also, the US government would
3 have closed us down too, the P and S regulations,
4 because all the money that we were taken from was
5 the custodial account, which is the farmers's
6 money. It's not ours. We get a certain percent
7 from the seller for selling the livestock. But
8 when the buyer buys cattle, that money is paid
9 right into the custodial account to pay the seller
10 for their cattle, or sheep, for their livestock.
11 So we already paid those people for those cattle,
12 so we didn't -- and then we never got paid from
13 them, so we were in the hole 194,000, so we had to
14 go to the bank and borrow that money so those
15 people could be paid, otherwise they wouldn't have
16 got paid, and that would have been even worse yet
17 and lost our trust in the barn.

18 The barn's been there since 1947. My dad
19 before me ran it. It's a family operation. My
20 brother-in-law is here too to talk. And it's a
21 family business. We're very proud of it. People
22 that work there for us have been 20, 30 -- 38 years
23 is the longest an employee has been there so far.
24 So it's a family deal, and we're proud of it. And
25 it's just a shame that this had to happen, you

1 know. And now we're going through the interest
2 that we had to pay on that money until we got paid
3 back from the trust account. Now, we got paid back
4 the 194,000, but it came out of the trust account.
5 He didn't pay us direct. If it wasn't a US
6 regulation to have a trust account for packing
7 companies, we would not have -- probably most
8 likely would not have gotten a penny. So it's a
9 good thing that the government has this regulation
10 with packers to have this trust account to pay
11 these creditors -- the people for their cattle. So
12 we did get the money back, but it was like 6,
13 7 months later that we got it, so we were out like
14 \$3,600 in interest from that time that we had to
15 borrow that money, plus attorney fees, you know.
16 We had to go write statements up and do all this.
17 And emotional distress, you know, because it wasn't
18 long before that, we had been taken for 167,000
19 from another cattle buyer that went bankrupt, so it
20 was kind of like two whammies in about a year. And
21 it was really, you know, a lot of stress on us. We
22 were trying to keep things going, because we were
23 proud of our business. We wanted to keep it going.
24 And we worked our way out of it, but we're still in
25 debt again, paying back from the other time. But I

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1 just wanted to let you know that it did hurt us,
2 and it hurt a lot of our respect from our people
3 that have bought there, their faith in packing
4 companies.

5 Agri Star that is currently buying now,
6 they are back buying at the sale barn, but it's a
7 wire money only, you know. We lost our trust in
8 taking a check from anybody anymore, you know, and
9 that's a shame. So that's basically what I wanted
10 to say.

11 THE COURT: Thank you, Mr. Dean.

12 MR. DEAN: Thank you.

13 MR. WILLIAMS: Your Honor, the next would
14 be David Beyer.

15 THE COURT: Good morning, Mr. Beyer.

16 MR. BEYER: Good morning, ma'am.

17 THE COURT: Could I ask you to state your
18 full name, and then you can make your statement to
19 the Court.

20 MR. BEYER: David Beyer. What I want to
21 say is they took -- he -- we were out the money for
22 5, 6, 7 months, whatever it was. And the trust
23 account paid it. We're out attorney fees, pain and
24 suffering. We had to go to the bank, borrow the
25 money. If the bank wouldn't have borrowed [sic]

1 the money, we would have had -- I probably got 8, 9
2 full-time employees. Their families would have
3 been affected, because they wouldn't have had a
4 job, everything like that. Attorney fees. And
5 right now, we're in the middle of fighting the
6 bankruptcy deal. They go back 90 days. They want
7 us to return a little over a million dollars to --
8 to go back into this bankruptcy deal, which it
9 isn't our money. We don't profit from him buying
10 at our barn. We profit from the farmer selling to
11 us. And we're fighting that now all over this
12 deal. And it's just -- it's a lot of sleepless
13 nights worrying, you know, whether your employees
14 are going to have a job or not, whether you're
15 going to have a job or not. So it's just -- it's a
16 bad deal, but -- I better stop at that. Thank you.

17 THE COURT: Thank you, Mr. Beyer.

18 Mr. Williams, any additional statements
19 from victims?

20 MR. WILLIAMS: No, Your Honor. Thank
21 you.

22 THE COURT: All right. Very fine.

23 Now we're ready to continue with the
24 evidence. And, Mr. Cook, any additional evidence,
25 sir?

1 MR. COOK: Yes, Your Honor. We call
2 Mr. Kenny Klepper.

3 THE COURT: Mr. Klepper, good morning.

4 KENNETH KLEPPER,
5 called as a witness, being first duly sworn or
6 affirmed, was examined and testified as follows:

7 THE COURT: Please be seated.

8 THE WITNESS: Thank you.

9 DIRECT EXAMINATION

10 BY MR. COOK:

11 Q. Please state your name for the record.

12 A. Kenneth Richard Klepper.

13 Q. And your age, sir?

14 A. 49.

15 Q. Where do you live?

16 A. Postville, Iowa.

17 Q. Could I ask you to lean forward just a little
18 bit so we can catch you on the microphone.

19 A. Is that better?

20 Q. Speak into that.

21 A. Is that better?

22 THE COURT: Yes.

23 Q. That's good. Lean forward. That's great.

24 We have some other people listening in another
25 courtroom.

1 A. Okay.

2 Q. I'm sorry, tell us again where you live.

3 A. Postville.

4 Q. And let's get a little information about your
5 background. Where were you born and reared?

6 A. I grew up in Frankville, Iowa, which would be
7 about 8 miles north of Postville. Went to
8 Postville school.

9 Q. And just give us a little summary of your
10 employment background after graduating from high
11 school.

12 A. First I worked at a hog complex outside of
13 town for 4 or 5 years. And then I went to a turkey
14 plant for a year, co-op. And then I started
15 working at Agriprocessors after that.

16 Q. And approximately when would you have started
17 at Agriprocessors?

18 A. I started in September before they began
19 kill. I don't remember which year that is for
20 sure.

21 Q. And how many years did you work there?

22 A. First time, 4 years 11 months.

23 Q. And left -- when was that, approximately?

24 A. If I -- 5 years after they started. If they
25 started in '89, it would have been '94.

1 Q. What sort of work did you do there during
2 that period of time?

3 A. Maintenance.

4 Q. That involved you being all over the plant,
5 dealing with maintenance issues?

6 A. Uh-huh. I dealt with maintenance. I dealt
7 with the USDA. There was paperwork called PDRs.
8 If there was problems, let's say a drain was
9 plugged up, you would have to fill out paperwork
10 how you're going to fix it, correct it, stuff like
11 that, so --

12 Q. And the USDA would have strict guidelines
13 that had to be followed, and you had to respond to
14 any guidelines that were afoul; is that right?

15 A. Yes.

16 Q. And then you were back there a second time;
17 is that right?

18 A. Uh-huh.

19 Q. And when was that?

20 A. About 4 years ago. I was there for about
21 7 months. And a gentleman I used to work with, he
22 and I started our own business after that.

23 Q. Okay. During the time that you worked at
24 Agriprocessors, did you come to know Sholom
25 Rubashkin?

1 A. Yes, I did.

2 Q. And what sort of dealings did you have with
3 him while you worked at Agriprocessors?

4 A. Oh, professional, personal. I'm fortunate to
5 know Sholom. He's a good man, always treated me
6 and my family very well. Sholom and I have --

7 Q. Let me stop you right there for just a
8 second. You talked about your professional
9 interactions with him. What would those involve?

10 A. Whatever I could do to help him keep the
11 plant running, whatever it took, you know.

12 Q. And did your working at the plant involve
13 working during the day and at night, all different
14 types of hours?

15 A. I would be in there all different hours, in
16 and out, where --

17 Q. During the two different periods of time that
18 you worked there, did you ever witness any abuse of
19 workers?

20 A. Never.

21 Q. Now, I want to talk to you about your
22 personal relationship with Mr. Rubashkin. You've
23 known him for many years?

24 A. Oh, yes, since he's moved to town.

25 Q. 15 or 20 years?

1 A. Yeah.

2 Q. And do you know his family?

3 A. Oh, yeah, I know them all.

4 Q. Know his wife Leah?

5 A. Oh, yes.

6 Q. And you know one of his sons, Moshe?

7 A. Yes, I know Moshe very well.

8 Q. And what sort of observations did you make
9 regarding Sholom's relationship with Moshe?

10 A. Well, Sholom and Moshe -- one thing Sholom
11 and I have in common, we both have special needs
12 children. And when I worked for Sholom, one
13 stipulation was I -- the second time I came back to
14 work for Sholom is because I -- I went through a
15 divorce. I only got to see my daughter two nights
16 a week for 3 hours. Part of our agreement was, no
17 matter what, I wasn't there; I was with my
18 daughter. I would see Sholom and Moshe together.
19 Sholom has 9 other children, but it would just be
20 the 2 of them together. Very special time.
21 Moshe's quite a kid. He -- I go and do -- now I
22 run a plumbing business. I do service work at
23 their home. And, you know, as soon as I come
24 there, Moshe's visiting with me. He -- sometimes I
25 think he plugs things on purpose just so I'd come

1 and see him, so --

2 Q. Now, you mentioned that you have a special
3 needs daughter; is that right?

4 A. Yes.

5 Q. And has that experience impacted your
6 relationship with Sholom?

7 A. I think any -- any parent that has a special
8 needs child and meets other parents with special
9 needs, that's -- it's another special bond they
10 have together.

11 Q. Let's talk about, then, your personal
12 relationship and history with Sholom Rubashkin.
13 Have you ever witnessed him intentionally harm or
14 hurt anyone?

15 A. Never.

16 Q. What can you tell us about his motivations?

17 A. To strive to make a good life for his family,
18 for his friends. I know there's things that a lot
19 of people know -- don't even know that Sholom did
20 for the community. I mean, little things. I've
21 been on the fire department in Postville for
22 20-some years. One thing the fire department does
23 is have a steak fry once a year. The Rubashkin
24 family, Sholom, always donated, you know, a hundred
25 steaks for the fry. You know, it's stuff like that

1 that he wouldn't have had to do, but out of -- you
2 realize in a community where everybody's
3 volunteering their time to -- you know, if
4 something is on fire, we go there. If we need help
5 with an accident scene, the fire department goes
6 with that, and it was just his way of giving back
7 to us.

8 Q. What sort of generosity or considerations
9 did he give to you personally?

10 A. Friendship. There was times if I needed
11 anything, I would just -- if I ever needed
12 anything, I would go see him, you know. He gave me
13 gifts of food, you know, a different type of food
14 that they had made or something like that. It was
15 whatever -- if there was ever anything I needed
16 help with. And in the same token, if I could help
17 Sholom, I would help him.

18 Q. And you mentioned your divorce. What sort of
19 help did he provide through that process?

20 A. Moral support.

21 Q. Do you have any opinion as to whether Sholom
22 Rubashkin is a person who is motivated by greed?

23 A. No, he's not.

24 MR. COOK: Thank you, sir. No further
25 questions.

1 THE COURT: Mr. Williams?

2 MR. WILLIAMS: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Sir, I just have a few questions for you.
6 You talked about working at Agriprocessors on a
7 couple of occasions. The first time you left, if I
8 understand your timeline here, you would have left
9 employment back in 1994?

10 A. If they started in '89, I was there -- I
11 started, like, in September. They started killing
12 in January of whatever year. I was in before --
13 during renovation of the plant.

14 Q. Okay. And then you weren't back then to
15 Agriprocessors until 2006?

16 A. I'm not exact on the year, but it was close
17 to that.

18 Q. Sounds about right. If your personnel file
19 said 2006, you wouldn't have a reason to disagree
20 with that?

21 A. No, I don't.

22 Q. And you worked in maintenance?

23 A. Yep.

24 Q. In 2006?

25 A. Yep.

1 Q. And you were there for only 7 months in 2006?

2 A. Yep.

3 Q. All right. So you -- you don't have any
4 firsthand knowledge of what was going on in the
5 plant in 2007?

6 A. Once we started our business, no. I didn't
7 do -- we didn't do any contracting in the plant,
8 no.

9 Q. Fair enough. And same thing, you don't have
10 any firsthand knowledge of what happened at the
11 plant in 2008?

12 A. No.

13 Q. Okay. Will you agree with me, to the extent
14 that there were illegal aliens or undocumented
15 workers working at Agriprocessors, you would agree
16 that those people might be more reluctant to
17 actually complain about any mistreatment for fear
18 of being deported?

19 A. I guess that would be up to the individual
20 person. I can't -- I don't know.

21 Q. Well, you weren't in charge of personnel at
22 Agriprocessors --

23 A. Uh-huh.

24 Q. -- right?

25 A. Yeah. There was people that worked under me,

1 yes.

2 Q. And if there were complaints, they would have
3 gone to personnel people there, human resources
4 department?

5 A. Yeah.

6 Q. Okay. And do you know there were, in fact,
7 some reports to the human resources department
8 there about -- about abuse? You're aware of that?

9 A. No, I'm not, sir.

10 Q. All you're saying is you personally never
11 observed any abuse at Agriprocessors?

12 A. Correct.

13 Q. All right. You aren't saying that there
14 wasn't any, because you don't know?

15 A. I don't know.

16 MR. WILLIAMS: No further questions, Your
17 Honor.

18 THE COURT: Mr. Cook?

19 MR. COOK: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. COOK:

22 Q. Let's follow-up on this matter, Mr. Klepper.
23 You never personally witnessed any mistreatment or
24 abuse of workers at the plant?

25 A. No, I did not.

1 Q. And that would include both of the times or
2 periods of times that you worked there?

3 A. Correct.

4 Q. And that would include whether you were there
5 at night, in the afternoon, during the day, all
6 hours, you never saw anything like that?

7 A. No, I never seen anything.

8 Q. Now, I want to -- I want to direct your
9 attention to that period of time shortly after the
10 raid. Did you have an opportunity to speak with
11 Sholom Rubashkin about claims that people had been
12 abused?

13 A. Yes.

14 Q. And where did that happen?

15 A. Sholom and Leah were out for a walk when --
16 and they came over to our shop. And Sholom -- it
17 was my partner and a couple other guys out in the
18 yard doing some stuff, so Sholom asked if he could
19 speak in private with me. And Sholom and Leah and
20 I went in the office. And I've known Sholom for a
21 long time, and he -- he asked me -- he goes, "I
22 have a -- a question," and I could tell something
23 was really bothering him, because, like I said,
24 I've known him a long time. I know how to read
25 him. And he -- he goes, "Kenny, they say that

1 people were being abused in there." And you could
2 tell there was hurt in his face, to think that
3 if -- if you owned a piece of property and someone
4 was being hurt on your piece of property, you know,
5 that would be hard to accept, hard to take. And I
6 said, "No, Sholom, I have never seen anything like
7 that," and I could see the look of relief in his
8 face, because I -- I know Sholom has faith in me
9 that I would tell him the truth. And the relief on
10 his face was just -- you could see it lift off him.

11 MR. COOK: Thank you. No further
12 questions.

13 THE COURT: Mr. Williams?

14 MR. WILLIAMS: Nothing further, Your
15 Honor.

16 THE COURT: Thank you. You may step
17 down.

18 Further evidence?

19 MR. BROWN: Yes, Your Honor. Abe Roth.

20 THE COURT: Hello, sir.

21 THE WITNESS: Good morning.

22 THE COURT: I'm now going to administer
23 the oath.

24

25

1 ABRAHAM ROTH,
2 called as a witness, being first duly sworn or
3 affirmed, was examined and testified as follows:

4 THE COURT: You may be seated.

5 DIRECT EXAMINATION

6 BY MR. BROWN:

7 Q. Would you tell us who you are, please.

8 A. My name is Abraham Roth. I'm a practicing
9 accountant.

10 Q. And you're from New York; is that right?

11 A. Yes.

12 Q. You know the Rubashkin family?

13 A. Yes.

14 Q. Have performed professional services for the
15 Rubashkin family in the past?

16 A. Yes.

17 Q. Testified at -- at the trial in South Dakota?

18 A. Yes.

19 Q. And for purposes of sentencing, were you
20 asked to look at different ways of attempting to
21 compute the claimed loss to FBBC as a result of the
22 offenses of conviction?

23 A. Yes.

24 Q. I provided you with some bankruptcy
25 documentation in advance of the -- your testimony

1 here today, is that true?

2 A. That is correct.

3 Q. And a spreadsheet that summarizes the loan
4 progression at FB, is that true?

5 A. I don't understand what you just said.

6 Q. Did I provide you with a spreadsheet that
7 summarized the various loans and how they
8 progressed over time between FB and Agriprocessors?

9 A. Yes.

10 Q. Were there things that I didn't give you that
11 are important to you?

12 A. Well, there's a lot of information missing.

13 Q. If you were tasked, separate from this case,
14 but if you were tasked to try to determine the
15 amount an asset-based lender has lost after a
16 borrower has gone into liquidation or bankruptcy,
17 what information would you begin to assemble?

18 A. Well, I would want to have a full list of all
19 the assets that have something to do with this
20 loan, that would serve as security for this loan.

21 Q. In this particular case, you reviewed the
22 schedule -- the bankruptcy schedules of
23 Agriprocessors; is that correct?

24 A. That is correct.

25 Q. And was it your understanding from those

1 schedules that Agriprocessors was representing at
2 the beginning of the bankruptcy that their total
3 net value was worth about \$83 million?

4 A. \$83 million plus.

5 Q. And did that include the trademark values?

6 A. No.

7 Q. Did that include Local Pride values, if any?

8 A. No, no.

9 Q. So once the bank -- excuse me, once
10 Agriprocessors went into bankruptcy, did you -- do
11 you have a general understanding of generally what
12 starts to happen when the trustee is running the
13 show?

14 A. Please be a little more specific.

15 Q. What is your general understanding of what
16 happens to -- if somebody pays a bill, where does
17 the money go?

18 A. It goes into -- into the new entity.

19 Q. And should there be a distinction between
20 money that's received that is considered
21 pre-petition versus money that is earned
22 post-petition?

23 A. Yes.

24 Q. All right. So in attempting to ascertain
25 what FB -- it lost as a proximate cause of the

1 fraud and the conduct in the offenses of
2 conviction, what kind of data would you believe is
3 necessary to be taken out of the bankruptcy?

4 A. Well, I would first want to have a detailed
5 understanding of the accounts receivable, how much
6 was there, take off the corrupted receivables,
7 understand how much was collected, how much is out
8 there in litigation, how much is uncollected,
9 understand why it's uncollected, so I can figure
10 out what actually the accounts receivable is going
11 to be providing for the -- to pay off the loan.

12 Q. So you would -- you would agree that one step
13 would be to carve out the -- any accounts
14 receivable that were phony or fraudulent?

15 A. That is correct.

16 Q. And you would be -- you would want to know
17 how much was actually pre-petition accounts
18 receivable that was collected?

19 A. That is correct.

20 Q. And would you want to know whether or not it
21 was collected at a discount?

22 A. I would want to know every detail of it.

23 Q. Is it your understanding that there was
24 litigation pending between FB and various vendors
25 or purchasers of product that is unresolved?

1 A. Yes.

2 Q. Why is that of interest?

3 A. Because it's a way of figuring out what
4 additional assets are out there that could be used
5 to reduce the outstanding loan.

6 Q. What would you want to know about inventory?

7 A. Well, I would like to have a full accounting
8 of the inventory. I would like to know what they
9 sold, for how much they sold, on what basis they
10 sold it for the price they sold it.

11 Q. Now, is it your understanding that -- that
12 Sholom Rubashkin had any -- had any responsibility
13 for sorting out what inventory got sold or didn't
14 get sold after he was charged with federal crimes
15 in this matter?

16 A. You have to be a little more specific. I
17 don't understand the question.

18 Q. Do you understand Sholom Rubashkin to have --
19 to have anything to do with the bankruptcy?

20 A. No. Once the bankruptcy was filed, he was
21 totally out of the picture, is my understanding.

22 Q. What is your understanding, having been a CPA
23 for numerous years, is a natural consequence of a
24 liquidation of a business of this nature or a
25 bankruptcy of this nature?

1 A. Well, the assets are valued; they try to
2 liquidate. Usually receivables are liquidated
3 between 60 and 70 percent of the receivables, the
4 good receivables, which in this case would be the
5 receivables less the fraudulent receivables.
6 They -- so that would be the inventory. So I
7 would -- I would want to know what exactly they got
8 for those receivables.

9 Q. And are you saying that in the ordinary case,
10 assets suffer a 30 to 40 percent devaluation just
11 because of the way things work in the marketplace
12 and the bankruptcy-place?

13 A. That was my understanding. And I also
14 confirmed that with bankruptcy attorneys.

15 Q. Would you presume that an experienced
16 asset-based lender out of a big city such as
17 St. Louis would know that too?

18 A. Yes, I think they would.

19 Q. And that 30 to 40 percent devaluation that
20 is -- is expected, is that in any way rationally
21 related to whether there was fraud in the assets?

22 A. Well, as long as they can determine the
23 receivables, which in this case I believe it's very
24 determinable, they are collectible. Receivables
25 are receivables. These are good receivables.

1 Q. Was it -- were you apprised that the -- that
2 the FBI was able to ascertain which invoices were
3 phony because there was -- there was -- there was
4 no corresponding true bill of lading?

5 A. It's clearly something that could be figured
6 out through the documentation and through inquiry.

7 Q. Why would you want to know what the value of
8 the trademarks were?

9 A. Well, that's another asset, to be able to
10 reduce the outstanding liability of the bank.

11 Q. Now, in this particular case, Agent Van Gent
12 has gone to the -- gone to the FB representatives
13 and asked them, okay, where -- where did the loan
14 start, at the end, and how much have you got paid
15 back. Why is that not the proper GAAP rationale
16 for figuring out what did the fraud proximately
17 cause as a financial loss to FB?

18 A. Well, they started off with a number of 29
19 million, and they made some adjustments, and
20 they -- they make everyone believe that 29 million
21 they're starting off with is God-given. No one has
22 shown us any details how they got to the 29. It's
23 after the 29 that they're giving us -- they're
24 feeding us bits and pieces to see how to reduce it
25 to 26, and that's also incomplete.

1 Q. Now, there was some testimony yesterday that
2 the first \$20 million, this -- was not -- was
3 pristine and it wasn't influenced by any
4 enhancement. Is there a way to look at how that
5 \$20 million should be utilized in determining what
6 FB -- FBBC was -- actually lost as a result of the
7 fraud?

8 A. Yes, it's clearly -- the 20 million is the
9 same 20 million that was there when the new
10 financing came in. That 20 million was quality
11 receivables. What does it have to do with the
12 loss? The loss is the difference. It's the
13 corrupted receivables.

14 Q. So would a second way of looking at this be,
15 if you're trying to analyze from a clinical
16 accounting standpoint the value attributable to
17 fraud, is it your understanding that's
18 approximately \$10 million, when the plant was in
19 default in October of 2008?

20 A. It's actually about 8 and a half million
21 dollars because that's what the bank financed,
22 85 percent.

23 Q. So of the 10 -- the 10 -- approximately 10 to
24 \$11 million that were in existing false invoices on
25 or about October 22, 2008, the bank loaned

1 8.5 percent -- or 85 percent of that?

2 A. That is correct.

3 Q. And while that -- strike that. I also
4 supplied you, did I not, some APGEN data that
5 related to interest that the bank received on
6 various -- various portions of the loan over time;
7 is that correct?

8 A. That is correct.

9 Q. Were you able to come to some -- to a
10 reasonable degree of certainty some type of
11 estimate as to how much interest FB earned on
12 fraudulent invoices?

13 A. I did a very detailed analysis, and I
14 concluded that FB earned approximately \$4 million
15 of interest on the corrupted receivables.

16 Q. So subject to whatever the loss is about
17 that, theoretically, are you saying that the
18 \$4 million then should come off that \$8.5 million?

19 A. Any computation that's being done for the
20 loss should be reduced by that \$4 million.

21 Q. Now, there's been testimony at the trial and
22 testimony yesterday that -- that when First Bank
23 started kicking in DIP financing, they didn't know
24 that there was this large chunk of accounts
25 receivable that were phony. Take that as an

1 assumption, all right, for purposes of the next
2 question. In your professional opinion, does that
3 end all their due diligence requirements at the
4 time they decide to enter into DIP financing for a
5 major company that's gone bankrupt like this?

6 A. Absolutely not. When the company
7 provides -- when a financing company provides DIP
8 financing, they do extensive due diligence before
9 they make an investment. If -- if a bank makes an
10 investment before doing extensive due diligence, it
11 is totally their issue, nobody else's.

12 Q. But they say they didn't know that there was
13 these phony invoices out there, and they wouldn't
14 have kicked in this money, and Sholom should have
15 told them?

16 A. That's a totally unaccepted argument.
17 They're responsible to do due diligence. They're
18 supposed to sit down and do -- Sholom was out of
19 the picture. They're supposed to do extensive due
20 diligence. When you do DIP financing, you're
21 coming into a company that already got into
22 trouble. So in order to put in additional money,
23 you do -- you really do serious due diligence. If
24 they didn't do due diligence, they can't blame that
25 on someone else.

1 Q. Well, there was chickens to feed.

2 A. So there was chickens to feed. If anything,
3 they could have advanced a couple of dollars to
4 feed the chickens. It still has nothing to do with
5 the \$5 million DIP loan.

6 Q. So is there a way -- is there a reasonable
7 way to argue that if FB in the end essentially got
8 \$8.5 million, that that's approximately what they
9 would have gotten at the end and that should be
10 credited against the loss amount?

11 A. That should clearly be credited against the
12 loss amount. It should not offset DIP financing.

13 MR. BROWN: I have no further questions
14 for this gentleman, Your Honor. Thank you, Your
15 Honor.

16 THE COURT: Mr. Deegan?

17 MR. DEEGAN: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. DEEGAN:

20 Q. First of all, sir, you did testify at the
21 trial in this case?

22 A. Yes.

23 Q. And at the time, I asked you whether or not
24 you were being provided some sort of professional
25 fee for your testimony. Do you recall me asking

1 those questions?

2 A. Yes.

3 Q. And I believe you said, no, you were
4 testifying as a friend to the defendant, isn't that
5 correct?

6 A. That's correct.

7 Q. Is that the same here today, you're here
8 testifying as a friend of the Rubashkins?

9 A. That is correct.

10 Q. You're not being paid for any sort of
11 professional analysis that you've done or any
12 advice or consulting that you provided?

13 A. I'm not being paid, but I'm not here only as
14 a friend. I'm here as a professional consultant.
15 I'm just not being paid.

16 Q. Let's talk about that a little bit. First of
17 all, you said that -- have you looked at the
18 bankruptcy schedules? Is that what your testimony
19 is?

20 A. That is correct.

21 Q. And that Agriprocessors was representing sort
22 of a book value of 83 million plus?

23 A. There were various assets that add up to 82
24 and change, that is correct.

25 Q. And that's information that Agriprocessors

1 was claiming to the bankruptcy court in November of
2 2008, isn't that correct?

3 A. That is -- that is bankruptcy schedules,
4 schedules that were submitted to the bankruptcy
5 court.

6 Q. By Agriprocessors?

7 A. By whoever prepared those schedules.

8 Q. All right. You didn't prepare the schedules?

9 A. No.

10 Q. And you didn't do any independent
11 investigation into the accuracy of those schedules,
12 isn't that correct?

13 A. That is correct.

14 Q. You testified that there's -- well, let's --
15 let me jump ahead here for just a second. You
16 talked about the natural consequences of
17 liquidation being that a good receivable is reduced
18 in value by maybe 20 to 30 percent or 30 to
19 40 percent, isn't that correct?

20 A. 30 to 40 percent, that's correct.

21 Q. And that's -- that's sort of common
22 knowledge, isn't it, that in a liquidation,
23 receivables are going to be worth much less?

24 A. I'm talking about a liquidation.

25 Q. All right. But my question is, it's sort of

1 common knowledge, isn't it?

2 A. That what?

3 Q. That receivables are going to be worth much
4 less in a liquidation than they would be if they
5 were trying to be collected as a going concern?

6 A. I was not talking about a going concern. A
7 going concern does not lose 30 to 40 percent of its
8 receivables. I was talking about a liquidation.

9 Q. Thank you. And at the time of the
10 bankruptcy, the DIP financing was an effort to keep
11 Agriprocessors going as a going concern, isn't that
12 correct?

13 A. It was -- DIP financing was so that the
14 company could restart.

15 Q. Well, yeah. The bottom line is, the trustee
16 and the bank wanted to try to either sell the
17 company as a going concern or at least try to
18 collect some of the receivables at a time when it
19 was a going concern, isn't that fair?

20 A. It could be.

21 Q. And we talked about the DIP financing that got
22 put in, \$5 million. Is that your understanding?

23 A. Yes.

24 Q. And chickens needed to be fed?

25 A. I heard that.

1 Q. And the electrical company was about to shut
2 the power off, isn't that correct?

3 A. I heard that, yeah. I didn't hear that. I'm
4 hearing that from you now.

5 Q. Bottom line is, that \$5 million can go pretty
6 quick when the company is completely out of cash,
7 isn't that correct?

8 A. Possible. But it does not take away from my
9 argument that I said to you before, that when you
10 do DIP financing, you do due diligence the way due
11 diligence is supposed to be done. Not just put
12 money in there and then claim that the other party
13 didn't provide you the information. That's not the
14 way DIP financing is done.

15 Q. Well, so it's your testimony then that it's
16 really the bank's fault that they put more money
17 into this business and they didn't know that there
18 was 10 to \$12 million of fake collateral in the
19 books?

20 A. It is their problem if they did not do proper
21 due diligence.

22 Q. Now, you haven't -- in -- in any analysis
23 that you've done, you haven't talked to anybody at
24 the bank, have you?

25 A. No.

1 Q. You haven't looked at any of their records
2 about what was sold, when, and for how much, have
3 you?

4 A. No.

5 Q. You haven't done any sort of independent
6 analysis of actually how the collateral the bank
7 had was disposed of, have you, sir?

8 A. I did not have that information available.

9 Q. And that would include accounts receivable
10 and inventory, correct?

11 A. That is correct.

12 Q. You actually testified these are good
13 receivables. What are you talking about? What
14 receivables are good receivables?

15 A. Besides the corrupted receivables, the rest
16 of the receivables are good receivables.

17 Q. But you don't know which ones are which
18 because you didn't do an analysis, did you?

19 A. I don't have to do an analysis. If I know
20 that 10 million is corrupted and the rest are not
21 corrupted, I know these are good receivables.

22 Q. That's my point, sir. You don't know
23 anything about the \$10 million or whether it was 10
24 to \$12 million, other than what other people have
25 told you; is that correct?

1 A. Everyone is relying on the number, because it
2 came from someone that supposedly knew what it was.
3 So if \$10 million was the acceptable number, the
4 rest of the receivables are good receivables. This
5 is an industry where receivables are collectible.
6 You just have to apply yourself to collect them.
7 And I don't believe the job was done properly, or
8 at least we haven't received an accounting of how
9 it was done properly.

10 Q. And was it your understanding that the 10 to
11 \$12 million really just accounts for the fake
12 invoices that were being loaned against at the time
13 of the bankruptcy? Is that correct?

14 A. That is correct.

15 Q. Is it your understanding that that doesn't
16 account for any diverted customer payments that had
17 not been applied to customer accounts?

18 A. That's irrelevant, because if anyone does a
19 careful analysis, he'll figure out where they were
20 diverted and where they belong, and he'll be able
21 to figure out which receivables are what he should
22 be able to collect on.

23 Q. What if --

24 A. The diversions were all temporary things.

25 Q. Well, do you know how long the diversions

1 lasted?

2 A. I saw from the documents. I don't have exact
3 recollection, but they were not long-term.

4 Q. Hold on a second. You're saying you looked
5 at documents and you can tell us the length of the
6 diversions?

7 A. I looked at your paperwork.

8 Q. You looked at the government's filings?

9 A. That's correct.

10 Q. Now, you're saying it's irrelevant, the
11 length of the diversions. Is that what you're
12 telling us?

13 A. I didn't say that. I said that -- that the
14 diversions are not relevant. If someone carefully
15 analyzes it, you can figure out exactly where it
16 was diverted to, and he can come up with a correct
17 receivables and he can pursue these receivables.

18 Q. Would you agree, if the money was hidden in
19 the form of large round deposits at the time it was
20 diverted, that would make it harder to tell that
21 the money was diverted? Isn't that correct?

22 A. Correct. Definitely, there's a little more
23 effort, correct.

24 Q. And if, when the money was then later on
25 returned down the road, it was disguised as being

1 customer payments by running it through a school
2 and a grocery store, that would make it harder to
3 tell the extent of the diversion, isn't that
4 correct?

5 A. Definitely is more difficult to figure out
6 exactly which -- which receivable is correct and
7 which one needs to be adjusted, but it's very
8 doable.

9 Q. And if in late October, just before the
10 bankruptcy, the defendant told the bank that the
11 amount of the diversion was \$1.4 million, do you
12 think that maybe the bank could have at least given
13 some credence to that amount because it was coming
14 from the CEO of the company?

15 A. I don't know what he said, but banks are
16 not -- are not in the position to accept what
17 people tell them. When they're in circumstances
18 like this, they have to do their own due diligence.

19 Q. But when you say this \$29 million figure that
20 was the starting point for the government's loss
21 analysis was incomplete, you haven't done any
22 independent looking at the numbers to determine how
23 that \$29 million figure was arrived at, have you?

24 A. It was never provided.

25 Q. And when you testified that the

1 \$20 million -- the original \$20 million that the
2 bank advanced at the beginning of the loan was
3 pristine, first of all, you don't know that to be
4 true. You're just assuming that, isn't that
5 correct?

6 A. I am making an assumption, yes.

7 Q. And if that was \$20 million in receivables
8 way back at the beginning of the loan, it's your
9 testimony that that \$20 million remains pristine
10 all the way through the bankruptcy?

11 A. I believe so.

12 Q. Did it ever occur to you that if it's based
13 upon receivables, that there's about a 60-day
14 rollover, and then after 60 days, that pristine
15 \$20 million in receivables is gone and replaced by
16 new either fake or real receivables?

17 A. There was always \$20 million of clean
18 receivables.

19 Q. How do you know that?

20 A. Because if there's \$10 million of not-clean
21 receivables, then there's \$20 million of clean
22 receivables.

23 Q. Are you aware that the amount of receivables
24 for Iowa at the time of the bankruptcy was in the
25 low 20 million range?

1 A. At which point?

2 Q. At the time of the bankruptcy.

3 A. Yeah, I don't offhand remember the exact
4 number, but I have seen the number.

5 Q. All right. And then if 10 to 12 million of
6 that at that snapshot in time was fake, then half
7 of it is phony and can't be collected, isn't that
8 correct?

9 A. That is correct.

10 Q. And that's a whole -- it leaves you with a
11 whole lot less than \$20 million, doesn't it?

12 A. But it still doesn't take away from the fact
13 that 20 million of that receivable in total was
14 good -- of the loan, of the loan balance, was good
15 receivables, was financing good sales, good
16 inventory, good inventory and good receivables.

17 Q. Well, anyway, good inventory and good
18 receivables, how many years before the bankruptcy,
19 do you know?

20 A. A number of years. I don't remember how
21 many.

22 Q. Now, you've also testified that the interest
23 earned on the fraudulent invoices was approximately
24 \$40 million; is that correct?

25 A. 4 million, I said.

1 Q. Excuse me, 4 million. And you said you did
2 some detailed analysis of that?

3 A. Yes, I did.

4 Q. Did you do it in writing?

5 A. Yes, I did.

6 Q. And was that entered as an exhibit, do you
7 know?

8 A. I don't know.

9 Q. Did you provide it to defense counsel?

10 A. Yes.

11 Q. And how much worth of fake invoices did you
12 assume was the case when you came up with the
13 \$4 million figure?

14 A. 10 million.

15 Q. Over what period of time?

16 A. It's a whole involved computation. You would
17 have to look at the computation, but I worked
18 according to the credit line. When the credit line
19 was lower, the assumption was that the corrupted
20 invoices were lower, and it's a whole progression.
21 It's -- it's a very detailed analysis that you'll
22 be able to follow and see how I did it.

23 Q. All right. And we've already heard from one
24 sentencing guideline expert in this sentencing.

25 You're not a sentencing guideline expert, are you?

1 A. No.

2 Q. So you don't know whether or not it's proper
3 to deduct interest earned off of advances made on
4 fake collateral from an actual loss amount for
5 guidelines purposes?

6 A. I can only say as an accountant it sounds
7 quite proper to me.

8 Q. You would agree though, that when the bank
9 advances money on fake collateral, their risk is
10 greatly increased, isn't that correct?

11 A. This was a very risk -- this was a high risk
12 loan to begin with. I don't really understand what
13 you're saying.

14 Q. I'm saying, it's greater than if there was
15 real collateral, the risk is greater?

16 A. Well, obviously.

17 Q. All right. That's pretty obvious. Isn't
18 that correct?

19 A. That is correct.

20 Q. And that played out in this case, because at
21 the time of the bankruptcy, there was no collateral
22 to collect on the fake invoices, correct?

23 A. There was more than enough collateral to
24 collect this loan, may not -- not on the invoices
25 but on the assets of this loan.

1 Q. And that's based upon the bankruptcy
2 schedules and other information that you haven't
3 independently done any analysis of?

4 A. Which I believe is still correct.

5 Q. Because you're a friend of the defendant's?

6 A. No, not because I'm a friend. Because I'm a
7 professional accountant.

8 Q. Now, are you aware of whether or not the
9 government's loss calculation and the bank's loss
10 calculation includes money extended for DIP
11 financing?

12 A. It was my understanding -- I don't have a
13 very clear -- I wasn't clearly told that, but I was
14 told that the payment from the new buyer went first
15 to pay the DIP financing.

16 Q. All right. But the bottom line is, the new
17 money that was extended wasn't added to the
18 original principal balance?

19 A. It doesn't have to be.

20 Q. All right.

21 A. If the DIP financing was paid off with money
22 from the sale of the plant, that money should have
23 been applied to the original loan, not to the DIP
24 financing, because the bank was supposed to be --
25 do proper due diligence and didn't.

1 Q. And that's whether or not -- and that's
2 because the bank should have known the full extent
3 of the fraud that had been committed against them
4 in November of 2008, is that your testimony?

5 A. They should have done proper due diligence.

6 MR. DEEGAN: No further questions, Your
7 Honor.

8 THE COURT: Anything else for this
9 witness?

10 MR. BROWN: One second, Your Honor.

11 (Whereupon, counsel conferred with the
12 Defendant.)

13 MR. BROWN: One series, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. BROWN:

16 Q. Mr. Roth, were you familiar with some filings
17 that were done by FB in their lawsuit against Aaron
18 Rubashkin and Sholom Rubashkin?

19 A. Be a bit more specific.

20 Q. Were you familiar with some filings by Phil
21 Lykens of FBBC in the civil lawsuit against Sholom
22 and Aaron?

23 A. Yes.

24 Q. And were you familiar with the filings in
25 which they sought judgment against Aaron for

1 \$21 million?

2 A. Yes.

3 Q. Not 29.9 million or 26.9 million?

4 A. Correct.

5 Q. Did that cause you any confusion?

6 A. Well, I was actually wondering why -- why --
7 if the loss is 26, why they were suing them for 21.

8 Q. And did that suggest to you that maybe they
9 couldn't figure out how much they've recovered on
10 this -- on this whole proposition during the
11 bankruptcy?

12 A. I wasn't really sure why they came to that
13 conclusion.

14 MR. BROWN: Nothing further, Your Honor.
15 Thank you.

16 MR. DEEGAN: No further questions, Your
17 Honor.

18 THE COURT: Thank you. You may step
19 down.

20 Further evidence?

21 MR. COOK: Your Honor, we would call Leah
22 Rubashkin to the stand.

23 THE COURT: All right. Mrs. Rubashkin,
24 will you please take the oath.

25 THE WITNESS: Certainly.

1 LEAH RUBASHKIN,
2 called as a witness, being first duly sworn or
3 affirmed, was examined and testified as follows:
4 THE COURT: Please come to the witness
5 stand. And I don't know if you have water there.

6 THE WITNESS: I do.

7 THE COURT: I couldn't see that far.
8 Okay. Let me know if you need any.

9 DIRECT EXAMINATION

10 BY MR. COOK:

11 Q. There's a good chance most people know who
12 you are, but please state your name for the record.

13 A. Leah Rubashkin.

14 Q. And could you lean forward just a little bit
15 so everybody can hear your voice.

16 Tell us your age, please.

17 A. 47.

18 Q. Do you have any children?

19 A. Yes, 10.

20 Q. You've been present throughout these
21 proceedings?

22 A. Yes.

23 Q. For the most part?

24 A. Yes, I have.

25 Q. And you were present at a trial that took

1 place in Sioux Falls, South Dakota?

2 A. Yes.

3 Q. And you understand we're here today for the
4 purposes of taking evidence as it relates to a
5 sentence to be imposed in this case?

6 A. Yes.

7 Q. Let's get some information about your
8 background. Where you're from originally and your
9 education, please.

10 A. Okay. I was born in New York, in Far
11 Rockaway, New York, raised on Long Island. I went
12 to various schools in the Yeshiva system, Mesivta
13 High School, went on to a teaching seminary, and
14 then -- then met Sholom.

15 Q. And when you say Sholom, I want to show you
16 what we've marked in this record as 9100A-1.

17 A. That's him.

18 Q. Do you recognize that handsome 12-year-old
19 boy?

20 A. Yes, I do. He actually looks like a couple
21 of my kids.

22 Q. And it sounds like part of your education was
23 leaning towards teaching as well; is that right?

24 A. Yes.

25 Q. And as far as you know, that's always been

1 Sholom's ambition in life, is to be a teacher, as
2 it says in his eighth grade graduation book?

3 A. Yes. Well, I got to hear about that when he
4 was about 22, but it seems like it was a
5 deep-rooted ambition.

6 Q. When were you married?

7 A. What year?

8 Q. Yes, ma'am.

9 A. '81.

10 Q. And some of this is already in the record
11 from the trial, but I want to get it in context
12 here. Walk us through briefly where you and Sholom
13 resided until you eventually came to Postville.

14 A. Sure. After we got married, we lived in the
15 Crown Heights community in Brooklyn. It's where
16 the Hasidic community -- one of the Chabad
17 communities. Actually, the headquarters of where
18 the Chabad community is from. And then we moved
19 about 5 or 6 years after that to Atlanta, Georgia,
20 where we lived for a year. And then we moved back
21 for about maybe 9 months to Crown Heights, to
22 Brooklyn. And then we moved to -- that's when
23 Sholom took a job at Agriprocessors. And we moved
24 initially to the Twin Cities, to St. Paul, for
25 3 years, where he commuted back and forth. And

1 then eventually, after the 3 years and many snow
2 storms later, moved to Postville, Iowa.

3 Q. All right. I want to focus on that period of
4 time in Atlanta and then when you moved from
5 Atlanta. What was Sholom Rubashkin doing in
6 Atlanta?

7 A. Well, it has always been our desire to go out
8 to do outreach work, to teach Jews about their
9 Jewish roots, and so it was after a very
10 inspirational trip that we decided that we really
11 wanted to pursue that. Then we made inquiries as
12 far as different areas that were available, and we
13 ended up taking the one at Atlanta.

14 Q. And was part of that job -- the outreach you
15 described, did it involve a teaching component in
16 the Jewish faith?

17 A. Yeah, sure, it was mostly a teaching
18 component. Sholom taught adult education. He did
19 children's programs. He did Jewish summer camp.
20 It was -- countless counseling and teaching
21 involved in that. So it was mainly teaching.

22 Q. We have in evidence Defendant's Exhibit 9700,
23 which is the 18-page report of Susan J. Fiester,
24 M.D. She says in her report that Sholom Rubashkin
25 told his father about this plan to teach in Atlanta

1 and his father became angry about that. What do
2 you know about that?

3 A. Well, we had many conversations about that,
4 you know, the back and forth struggle of what to
5 do, should we pursue this, as it's been described
6 as Sholom's love for teaching. He's -- you know,
7 to give over this -- should he take the leap and
8 pursue this love that he has, or should he stay
9 back behind and do what is expected of him as far
10 as what the family expects. So there was this
11 constant back and forth struggle, and, you know, we
12 had many conversations about it.

13 Q. Eventually, did the disappointment that his
14 father had and the pressure that he put on him
15 regarding his decision cause you folks to leave
16 Atlanta?

17 A. Well, it was a combination of things. I
18 mean, we were living in Atlanta at the time. We --
19 at the time that we were in Atlanta, the plant was,
20 you know, was starting up, and, you know, we heard
21 about all these -- you know, the whole stress and
22 the hardship of putting the plant together, and,
23 you know, who was going out there. And our -- my
24 newlywed brother-in-law was going out there, and
25 what kind of stress and strain it must have been

1 for them as newlyweds, starting on their life,
2 going out there, you know, to be the eyes, so to
3 speak, for the family in the plant, and so -- yeah.

4 Q. All right. So eventually, Sholom Rubashkin
5 is working in Postville. Does he have an official
6 title as far as you know?

7 A. Well, I think -- he didn't come with an
8 official title, but we viewed ourselves as like
9 what I described with Heshy, as the eyes of the
10 family in the plant. Before, when the plant was
11 starting up, in the renovation stages, my
12 father-in-law went back and forth quite often, you
13 know, to establish the plant and make relationships
14 with people and start it going, and he couldn't
15 continuously do that. And so, you know, he needed
16 to have some kind of family representation in the
17 plant besides the managers that were running and
18 doing everything. He needed to have the security
19 of knowing that he had family there, so that was
20 how we viewed it.

21 Q. All right. And initially, he was commuting
22 from Postville to the Minneapolis area?

23 A. Yeah, St. Paul.

24 Q. And would he come home on the weekends, or
25 how did that work?

1 A. Well, basically, it depended on the season.
2 It depended on what was going on in the plant
3 itself. He was always home for Shabbos for the
4 weekend, and then tried to come, you know, during
5 the week a day or two. And, you know, obviously,
6 being the family man that he is, there was always
7 that pull to make it home and to be home, to be
8 with the kids and myself.

9 Q. What sort of a work ethic does Sholom have?

10 A. Well, I think it's -- it's -- I wouldn't call
11 it a work ethic. It's just a general ethic that he
12 has. Whatever he does, he puts himself totally
13 into it. And obviously, Agriprocessors and
14 wherever he's located benefits from that, and I
15 think that's probably why there's such an
16 overwhelming support. And you hear all these
17 people emotionally recounting their involvement
18 with him, because he's totally involved in whatever
19 he's doing. So when he's listening to somebody,
20 with all their pain or whatever they're going
21 through, he's there with them 100 percent, so it's
22 more than just a work ethic. It's just who he is.

23 Q. How would you describe his personality?

24 A. How would I describe his personality?

25 Q. Right.

1 A. Well, he's very outgoing. During the trial,
2 we described him as charming, so I would have to
3 add that to the record. He's definitely energetic.
4 I often say I need roller skates to keep up with
5 him. He has an amazing amount of energy. He's
6 warm. He's kind. He's -- I mean, there's so many
7 different -- I mean, we had this whole list of
8 things that the government witnesses said about
9 him, so, I mean, I could add to that, but I know
10 that there's a limit of the time, so --

11 Q. Do you know him to have ever physically
12 abused or hurt anyone?

13 A. No. As a matter of fact, before I was
14 reminding Adam of a story that one day in the
15 summer, we were out preparing for the trial, and we
16 were going with Adam from your office to Monty's
17 office, and there was a bird that was stuck
18 underneath the car. And Adam and the other lawyer
19 were ready to get in the car and "Let's go." And
20 Sholom said, "What are you talking about? There's
21 a bird underneath here. We have to get it." So he
22 took a stick and he went under the car physically
23 and he took out that bird, and he very carefully
24 put it on the side of the road so that nothing
25 would happen to it. So if this is a man that takes

1 out the time, in his big status of being, if you
2 want to call him CEO, which he really wasn't, but
3 the vice-president, if you want to call him the
4 firefighter, however you want to call him, for a
5 person of that stature to take out the time and to
6 physically go under a car to retrieve a bird, I
7 don't think we can call him an abusive person.

8 Q. All right. Let me talk about your children a
9 little bit now, if we can, as it relates to his
10 background and character. We've heard a lot about
11 your son Moshe. And to be efficient with our court
12 proceedings, is there a -- is there a videotape
13 that's in evidence of Moshe and his situation and
14 your family situation?

15 A. Yes.

16 Q. And that, for our record, is Exhibit 9304.
17 Have you had an opportunity to watch that?

18 A. Yes.

19 Q. And is there also a video in evidence,
20 Exhibit 9200, entitled Character of Sholom
21 Rubashkin, that has a number of people witnessing
22 or telling their stories of interaction with Mr.
23 Rubashkin and their opinions regarding his
24 character?

25 A. Yes.

1 Q. Have you had the chance to watch that video?

2 A. Yes. Actually, I just want to make a comment
3 about these videos, you know. They were prepared
4 to be seen in court. And I respect the judge's
5 opinion not to show it in court. But in an effort
6 to prepare for the Court, it was scaled down
7 tremendously. This is -- this is a synopsis of,
8 like, days and days and days of people coming
9 together and giving that kind of report, and so
10 it's a shame we don't have 2 weeks for this, that
11 people could just line up and give their testimony
12 to the character of Sholom Rubashkin, because I
13 think that it would show who the real Sholom
14 Rubashkin is, not who the media or, you know, other
15 sources want to paint him as.

16 Q. And is there also a video, Exhibit 9201, that
17 records a speech that you gave to some 15,000 or so
18 Jewish women in New York?

19 A. I believe so.

20 Q. And have you had the chance to see yourself
21 on that video?

22 A. Well, not on the disk that you're holding,
23 but I have seen it, yes.

24 Q. And again, in the interest of being efficient
25 with our court time, is it fair to say that that

1 discusses how your family has survived what's
2 happened since the raid?

3 A. Yeah.

4 Q. And while we're on the subject of these
5 videos, just for the record, there are two others.
6 One, 9202, which is entitled Agri Revisited, which
7 has to do with an inspection of the plant by
8 outsiders, have you watched that video?

9 A. I don't believe so, no.

10 Q. And then finally there's a video
11 Exhibit 9203. It's actually an Iowa Public
12 Television documentary on Postville that interviews
13 your husband and others in Postville. Have you
14 watched that or seen the original?

15 A. Many times.

16 Q. Would all of those videos be helpful to
17 someone, do you think, who might be considering
18 what would be a sufficient but not greater than
19 necessary sentence in this case?

20 A. I believe so, yes.

21 Q. All right. I took a little side road there.
22 I asked you about your children. Please tell us,
23 in addition to Moshe, the names of your other
24 children.

25 A. Sure. My oldest is Roza, Roza Hinda Weiss.

1 Then we have Getzel Rubashkin, who you just heard
2 from. Then my son, Shmuel Rubashkin. Meir Simcha
3 Rubashkin. Then we have Chaya Mushka, my daughter.
4 And then there's Yossi Rubashkin. Then we have
5 Moshe Rubashkin. Then there's Mendel, Menachem
6 Mendel Rubashkin. Then we have Menucha Rochel,
7 Devorah Menucha Rochel Rubashkin; and Uziel
8 Rubashkin.

9 Q. And how old is the youngest?

10 A. He just turned 6.

11 Q. And do you have grandchildren?

12 A. Yes, 7.

13 Q. 7 grandchildren?

14 A. Yes.

15 Q. This next subject I don't want to belabor,
16 because we've had other witnesses talk about it,
17 but I do want to hear it from you. As the mom and
18 the wife, what is the relationship that Sholom has
19 with Moshe that might be unique or different?

20 A. Well, I think what's been unique about both
21 of our attitudes towards Moshe -- and I think it's
22 been brought up a little bit, but I'd like to
23 emphasize it -- is that we've always accepted Moshe
24 for who he is and have never kept him locked in a
25 closet or been embarrassed of him. And obviously I

1 don't mean locked in a closet physically, but, you
2 know, we've always brought him wherever we went.
3 We -- we never, you know -- we never said, oh, you
4 know, we can't take him because he's -- actually,
5 we were considering bringing him to the courtroom,
6 but I didn't want him to be too disruptive, but
7 he's -- he's -- he's somebody that was lucky to be
8 born into our family in the sense that, you know,
9 we really -- and Sholom is -- has been really
10 incredible about this, because besides just, you
11 know, taking him around to our social things --
12 which, you know, most of our social gatherings
13 involved Jewish people, which, you know, might have
14 the same outlook that we would have, that, you
15 know, special children have a special soul that's
16 sent into this body that -- you know, whatever that
17 mindset is. But even as a professional in his
18 workplace, you know, here he is a vice-president of
19 a very large company and has a special son, and
20 instead of shying away from that, he actually,
21 because he understood the bond that he had with
22 that son, did not say, oh, you know, "I'm sorry,
23 Moshe. I can't take you now because I have to go
24 to work." But if Moshe needed to spend time with
25 him, and the situation allowed it, Sholom would

1 take him to work in front -- you know, like he
2 wasn't -- he wasn't -- and that's no small feat. I
3 mean, I don't know. People, you know, gave
4 testimony about his relationship with Moshe and his
5 bond, but to say that you're not embarrassed of a
6 kid like this, you really have to live with a child
7 like this to understand what that means. I mean,
8 he has these unusual repetitious behaviors. He
9 says eee, eee, eee. He doesn't behave like a
10 normal child. It's not just that he has
11 developmental delays and he can't speak clearly. I
12 mean, he does unusual things that are not socially
13 acceptable. And so for somebody to put that all
14 aside and to say "This is my son. I will accept
15 him for who he is and help him to reach his
16 potential," no matter what that means and bring him
17 out into every single situation or environment that
18 he needs to be in to grow and to become the best
19 that he can be, that takes a giant of a person, I
20 think.

21 Q. What sort of involvement has Sholom had in
22 dealing with his treatment for his condition?

23 A. Well, we found out about this Option
24 Institute, which has been tremendously helpful in
25 Moshe's growth. And we initially found out about

1 that, I would say, about -- I want to say about 6
2 or 7 years ago. I'm not sure. It's hard to think
3 clearly when you're in this seat. You -- well, I
4 can figure it out. Let's see, he's 16 now, and --
5 about 10 years ago. 10 years ago we found this
6 Option Institute. We went for quite a few
7 programs. They have different programs. Some
8 programs help you set up the program that you do in
9 your home. Some programs are there to assess how
10 the child is doing and give you a program to move
11 forward. And Sholom was always involved in that.
12 And although he has this unlimited -- this -- well,
13 he had, I should say, this feeling of obligation
14 and endless dedication to Agriprocessors, this was
15 one area that was just untouchable, that if it --
16 if something had to do with Moshe, he took the time
17 and spent the time, and whatever it took, he was
18 there for it. So this included quite a few
19 week-long sessions in the Option Institute.

20 MR. WILLIAMS: I'm sorry, Mr. Cook, could
21 you tell me what the exhibit number is on that
22 exhibit up there?

23 MR. COOK: I'm sorry, I can't. There's a
24 bunch of photographs in evidence. If you object to
25 this without the number, I'll take it off the

1 screen.

2 MR. WILLIAMS: I just want to find it so
3 I can reference it myself.

4 MR. COOK: Okay, Mr. Zenor tells me it's
5 not an exhibit. We'll take it down, or we can mark
6 it. Sorry to have that picture on the screen
7 without it being marked.

8 Q. Let's try to move forward here so that we can
9 get some more work done here before the lunch
10 break.

11 A. Okay.

12 Q. And Mr. Zenor will mark that exhibit. We'll
13 deal with it later.

14 What sort of -- what sort of difficulties
15 have you faced now that your husband is
16 incarcerated and faces the prospect of further
17 incarceration with your son Moshe?

18 A. Well, obviously, as with the other children,
19 when you have a parent with such strong bonds to
20 the children, there's a deep feeling of hurt and
21 kind of like the rug's been pulled from under your
22 feet. You know, as children, and especially Moshe
23 not being able to communicate his feelings, there's
24 an emotional distress that is just undercurrent in
25 every second of his day. He's -- he's regressed in

1 different areas. You know, we use the term that
2 he's spiralling out of his autism and that, you
3 know, until this whole story started, you know,
4 we've seen tremendous growth and improvement in so
5 many different areas. And unfortunately, now we're
6 seeing this regression that is very, very
7 upsetting. He learned so much, you know, in
8 different areas. As a child, when he was younger,
9 he used to be very aggressive. He used to bite and
10 pinch and just -- not so much wanting to hurt
11 someone, but just out of this immense emotion, that
12 he would have these outbursts, and it was very hard
13 to watch. But through the programs that we were
14 doing with him, he learned how to control himself
15 and got to a certain development and a certain
16 awareness that he was able to control that. And
17 now, unfortunately, we're seeing that again, where,
18 you know, he -- he loses things, he loses his sense
19 of equal -- he just loses it. His fuse has become
20 short, and --

21 Q. Let me ask you about that specifically --

22 A. All right.

23 Q. -- in terms of your family, and it relates to
24 the sentence to be imposed here. What plans do you
25 have by -- excuse me, what plans do you have

1 regarding where you will reside once your husband
2 has received his sentence and so forth and the case
3 has proceeded forward?

4 A. Well, we're hoping to go to New York, back to
5 family, to get that kind of support and to
6 hopefully be able to visit Sholom as much as
7 possible, and -- wherever that will be.

8 Q. Okay. I want to go back to Dr. Fiester's
9 report, which is in evidence, and we won't go
10 through all those things. The Court will have it
11 to review. But I do have some questions. First of
12 all, you did have the opportunity to be interviewed
13 by Dr. Fiester?

14 A. Yes.

15 Q. And did you have the opportunity to at least
16 skim through her report?

17 A. Yes.

18 Q. There was some testimony earlier that
19 Dr. Fiester gave regarding her report. What
20 personal knowledge do you have about crying fits or
21 depression episodes that your husband went through
22 in dealing with the challenges of the business?

23 A. Well, there were a couple of periods,
24 different periods, throughout his time in Agri
25 where he would have sleepless nights, wake up in

1 the middle of the night, be very upset, and have,
2 you know, these crying spells. And he -- could you
3 repeat the question again so I can stay focused?

4 Q. Yes, I'm sorry.

5 THE COURT: We can have Ms. Murray read
6 it back if you like, Mr. Cook.

7 MR. COOK: Thank you. Thank you, Your
8 Honor.

9 (Whereupon, the requested portion of the
10 record was read by the court reporter.)

11 A. So with -- so we had different discussions,
12 and, you know, I tried to help Sholom work through
13 those times when things were hard for him, and he
14 had this pressure and this feeling of hopelessness
15 and "How are we going to deal with this" and
16 depressive type of symptoms.

17 Q. There was a reference to him being so
18 distressed by the situation that he would bang his
19 head against the wall. Did you witness any of
20 that?

21 A. Yes.

22 Q. And, again, we won't go into this in detail
23 because it's part of the record, but her report
24 references his difficulties in dealing with this
25 depression or being distraught by visiting sacred

1 sites to pray and look for guidance. Were you
2 involved in any of that?

3 A. Yes.

4 Q. Tell us, just very briefly, what that
5 involved.

6 A. Well, throughout the years, we would go back
7 to Brooklyn. Sometimes the reason was to visit
8 family, and it was incidental that we went to visit
9 the Ohel, which is the resting place of the
10 Lubavitcher Rebbe. Sometimes the motivating force
11 was to go specifically for that purpose. And it
12 was -- sometimes Sholom would take less than
13 24-hour trips back and forth, go to the -- to the
14 resting place, and then come right back, not even
15 visiting anybody. Just getting off the plane,
16 going to the site, spending hours there, and then
17 getting back on the plane.

18 And then, of course, there was the trip
19 to Israel, which was discussed, where we viewed it
20 as like a soul searching trip. Our daughter was
21 based in Israel at a very difficult time in our
22 personal lives and in the plant. And basically,
23 what it ended up being was just taking my daughter
24 from holy site to holy site and spending time with
25 her. And I'm sure that was a tremendous growth

1 experience for her, seeing her father pouring out
2 his soul to -- in the holy resting sites of these
3 different holy people and the holy sites in Israel.

4 Q. And the -- again, we won't go through the
5 entire report, but there's a reference that says:
6 During this time Mr. Rubashkin felt trapped. He
7 was a very depressed -- in a very depressed
8 situation. He felt helpless and hopeless.

9 Did you make that same observation?

10 A. There were many times where he had felt that,
11 definitely.

12 MR. COOK: Your Honor, this might be a
13 good time for the break, if the Court wishes.

14 THE COURT: That's fine. Thank you.

15 We're ready for our noon break. We'll
16 pick it up again at 1:00. And we will start
17 promptly, so I'll see you then.

18 (Whereupon, a luncheon recess was taken.)

19 THE COURT: We're ready to proceed in the
20 case of United States of America versus Sholom
21 Rubashkin, Case Number 8-1324. Mrs. Rubashkin is
22 on the stand.

23 And, Mr. Cook, you may continue.

24 MR. COOK: Thank you, Your Honor.

25 Q. Leah, let's just -- I know this has been

1 covered with some witnesses, but just very briefly,
2 let's talk about this home you live in in
3 Postville. What kind of a home is it?

4 A. Well, basically, when we moved into this
5 home, which we built about 14 years ago, it was a
6 3-bedroom prefab house that was pretty simple. We
7 raised our kids while they were young over there.
8 And about, I would say, 3 years ago, we put on this
9 extension.

10 Q. Okay.

11 A. It's categorized as one of the biggest houses
12 in Postville, but if you would transplant that
13 house to Cedar Rapids, it would fit in with a very
14 moderate -- in a very moderate neighborhood. I've
15 come shopping here, and unfortunately, Cedar Rapids
16 has been bringing me -- I've been here twice a week
17 for the last, I would say, 5 and a half months for
18 certain reasons, and had the opportunity to view
19 different neighborhoods, and it would fit in quite
20 nicely within a lot of neighborhoods here.

21 Q. Let's talk about the nature and function of
22 your home. I think one witness described it as a
23 Jewish Holiday Inn. What -- what sort of things go
24 on in your home besides just caring for your
25 children and sleeping there?

1 A. Well, a Jewish home is a little different
2 than what I have experienced as a typical home, and
3 that is that there's a very large thing put on
4 hospitality. And I think, coming into the
5 Rubashkin family and -- that kind of took that to
6 the max. And so our home is used for a lot of
7 different things. It's used for just parties; you
8 know, community -- you know, if the Jewish
9 community has a function, you know, that they're
10 celebrating a certain holiday or something, and
11 they need a place to house it, our home is used.
12 If there's, you know, other different typical
13 events that are, you know, maybe held in small
14 halls in other places, they're sometimes held in
15 our home. And back in the day, as they say, it
16 even had business meetings and just different
17 things. Sholom would bring home a bunch of people
18 from -- either visiting or people from the business
19 to our home.

20 Q. Let's talk a little broader about the nature
21 of your life-style there. What sort of vehicles do
22 you have?

23 A. People would term them as jalopies. I don't
24 know. We have a Chevy van, like a regular-size
25 van. We have a -- we used to have a Rendezvous

1 before somebody totaled it. Somebody lent the car
2 to somebody and they ended up totaling the
3 Rendezvous, so we don't have that anymore. But
4 right now I have a Toyota Sienna that actually is
5 kind of like a charity gift.

6 Q. I want to talk to you about Sholom's
7 characteristics. What can you tell us about his
8 loyalty to the family?

9 A. Well, you know, we discussed his loyalty and,
10 you know, our situation with Moshe and how he feels
11 so connected and, you know, a loyalty to that
12 relationship and bringing out the best in him. He
13 has amazing relationships with the kids. They look
14 forward to his nightly bedtime story and that kind
15 of thing. You know, he's always been there for
16 his -- our married children, you know, if there's
17 anything they need, discussing, helping to work out
18 different problems, situations, you know, that
19 happen throughout life.

20 Q. By the way, with respect to your son Moshe,
21 has Sholom undergone some special training as it
22 relates to caring for him?

23 A. Yeah. Like I mentioned before, he -- you
24 know, we went to this Option Institute quite a few
25 times, and that's basically a training center that

1 helps you learn how to deal with these special kids
2 and how to help them reach their potential.

3 Q. And again, a question I overlooked about your
4 home, is there -- have there been people living in
5 your home over the years you've been in Postville
6 who were not part of your direct family?

7 A. Yeah, we have quite a bit. I have 10
8 children, but I have about 25 or 30 adopted
9 children from throughout the years of people that
10 have lived in our houses, either because they don't
11 fit the mold of one set or another, and so they've
12 stayed with us.

13 Q. There's a fellow on one of these videos that
14 I know has been here for part of the hearing who's
15 also not directly related to you. Does he live
16 with you -- or he's lived with you?

17 A. Yeah, he's actually in the courtroom. And
18 when he came to the hearing, he said, "Hi, Mommy,"
19 so it was very cute. Yeah, he's lived with us for
20 quite a while. Now he's married with a son of
21 his -- with a daughter of his own, I'm sorry, and
22 he calls frequently to see how we're doing and how
23 Sholom is doing.

24 Q. Just before we leave the subject of your home
25 and your life-style, one of the exhibits that's in

1 evidence is Exhibit 9101, which is an excerpt of
2 some testimony given by Toby Bensasson, the
3 financial person at Agriprocessors. I'm not going
4 to go through the whole thing, but there's a
5 reference here that, he says, essentially, "The
6 Rubashkins are going to end up at the end with
7 zero, because all the money went back into
8 Agriprocessors. There's no money hidden anywhere."

9 Do you have money hidden somewhere?

10 A. No, no, unfortunately, there's no money
11 hidden anywhere, and -- and as a matter of fact,
12 you know, I'm constantly being barraged by calls
13 from different liabilities that we have.

14 Q. On the subject of Sholom's characteristics --
15 and I know we've heard some of this already, but
16 I'd like to hear it from your own personal
17 observations. His characteristics in terms of
18 responding to people in need.

19 A. Well, Sholom has a heart of gold, and he's --
20 he's -- he's just a selfless person, and I think
21 it's interesting that, as we speak here today, in
22 our daily -- we have a certain book called the Chai
23 L'Chayim, and it's kind of like a -- a daily dose
24 of inspiration. And I just want to read you the
25 thing from today, because I think that summarizes

1 who he is. And basically, it's a -- well, maybe I
2 won't read it verbatim, but I'll -- it kind of like
3 summarizes who he is. And it's -- it's a saying
4 that goes like this, "The piece of bread that I
5 have is yours just as it is mine." And the Hasidic
6 teaching is that "First, it's yours, and then it's
7 mine." In other words, anything that Sholom felt
8 that was his, he really felt that it was the other
9 person's before it was his. And so when somebody
10 came to him, he didn't feel like he was giving his
11 own thing to someone else. It felt like God gave
12 it to him, but really it belonged to the other
13 person if the other person reached his hand out to
14 him. And so not only did that have ramifications
15 in a financial sense -- I mean, it's very easy to
16 write out a check, throw it into somebody's pocket
17 and, you know, "Have a good day" and wish them
18 well, but that really translated into so many
19 different ways and giving of his time, of his
20 emotion, of who he was, and that's really who he's
21 all about.

22 Q. Let me ask you about another characteristic.
23 And what is his characteristic regarding honoring
24 his father?

25 A. Well, when Sholom was dating, it was very

1 obvious -- Sholom and I were dating. It was very
2 obvious to me that he had a huge respect for his
3 family, and his father in particular. And coming
4 from a more secular background, that was very
5 impressive and very touching to me, to -- you know,
6 we live in a culture that idolizes the youth. As a
7 person gets older, they typically decrease in
8 value, according to the -- to the media that's out
9 there and according to everything that we're
10 indoctrinated in in the American society. And here
11 was somebody who valued a person that was older,
12 who valued experience, who valued that perspective,
13 and who -- who respected and loved his father in
14 such a deep way, to the core of his essence.

15 Q. Okay. We talked earlier about Dr. Fiester's
16 report, and it wouldn't be efficient to go through
17 the report since it's in evidence, but there is a
18 reference on Page 12 of that report to Sholom
19 complaining, it says, begging his father to take
20 some action at the plant regarding issues that were
21 developing there. What personal knowledge do you
22 have that Sholom had problems with his father and
23 the business?

24 A. Well, we had different discussions about, you
25 know, him being frustrated, you know. There's --

1 the plant is, you know, a family business, and
2 there's different components and different family
3 members pulling and pushing in different
4 directions. And basically, being the fact that his
5 father owned the plant and was the head of the
6 plant and was the father of this family, he felt
7 that it would be beneficial for both the family and
8 for the business for him to come down and just set
9 things right and give direction and be there. And
10 it was with that in mind then and having the desire
11 to have his parents, and specifically, his father,
12 in the business sense, be in Postville that when we
13 made our extension, we made a special room for them
14 with a separate entrance so they could feel
15 comfortable to come and go when they wanted to.
16 And so I know that from conversations with Sholom
17 and also just hearing him on the phone, you know,
18 expressing that.

19 Q. Let's talk about a different subject. And he
20 stands convicted of fraud charges. What, in your
21 opinion, makes him tick? What is his motivation?

22 A. Well, I think what makes him tick and what
23 motivates him in every act and every thing that he
24 does is his conviction to his faith. I would sum
25 that up as just the core thing.

1 Q. Other witnesses have been asked about whether
2 he's motivated by greed. I want to ask you
3 specifically, is -- is he a person who desires more
4 material things, like -- like, "Leah, we need a
5 bigger house" or more cars or a second house. What
6 is his -- how would you describe his
7 characteristics regarding material things?

8 A. He has always either verbally but as we
9 were -- you know, in our early married years, when
10 we were first getting to know each other, and, you
11 know, experienced life together, you know, we've
12 had this experience verbally how -- we discussed
13 these different things, and then just throughout
14 the years, through his actions and different things
15 that came up, he was quite the opposite; he always
16 wanted to understate, you know. If we -- if he
17 felt that we were at a certain level of means, he
18 always wanted to be within the surrounding, you
19 know -- whatever -- what everybody else had -- I
20 always laughed that in Postville the workers in the
21 plant were running around in Cadillacs and Sholom
22 was riding -- well, he had a bunch of cars because
23 he always gave them away to people, but, you know,
24 he had a Rendezvous, a Buick Rendezvous, something
25 that was of much lesser value. And I remember when

1 we put our house together, it was a prefab house,
2 and, you know, everyone was suggesting, "Oh, you
3 have to upgrade in this, and you have to upgrade in
4 that." And he said, "No, we're not doing anything.
5 We're just going to" -- "we're going to get regular
6 linoleum floors and be like everybody else." And
7 that was basically his thing in life, is -- is that
8 when God blesses somebody with -- with money, it's
9 not for physical use but it's to help other people.

10 Q. Let's shift gears for a moment. And I would
11 imagine that you've contemplated where the future
12 might take you. And what can you tell us about
13 what Sholom would like to do once he's -- when all
14 this is over?

15 A. Well, he's -- we've discussed this many
16 times, and throughout the years, he -- he
17 displayed, like, frustration that he wasn't able to
18 do as he really wanted to do. And since this whole
19 story, you know, we've had many conversations that
20 all he wants to do is to be able to go back to do
21 what he wanted to do when he was a kid, and that's
22 to be a teacher.

23 Q. Does he have any plans, as far as you know,
24 to get back into business, or the meatpacking
25 business, or the retail business, or have anything

1 to do with operating a plant --

2 A. No.

3 Q. -- or money or workers?

4 A. Nothing like that. He wants to just be able
5 to sit and learn himself and to teach other people
6 and to be given that opportunity to do what he
7 always wanted to do.

8 Q. Along those same lines, in terms of
9 discussing what's happened here and where he goes,
10 can you provide us any testimony about how he feels
11 about what's happened?

12 A. Well, he's -- he's obviously very upset and
13 remorseful about what happened, and, you know, he's
14 discussed with me many times how he feels terrible
15 about this whole thing and how he wishes he could
16 turn back the clock and make different decisions.

17 Q. I want to talk to you about a couple of
18 exhibits that are in evidence. There's -- there's
19 hundreds, perhaps thousands, of letters from people
20 supporting Sholom and you. Have you looked at some
21 of those letters?

22 A. Yeah.

23 Q. And there's -- they're set forth in
24 Exhibit 9300. How has that impacted you and
25 Sholom?

1 A. Well, obviously, this has been a very
2 heart-wrenching time for us on so many different
3 levels. And many people probably would resort to
4 being very depressed and very paralyzed in what
5 they could do and how they could move forward. And
6 these letters have helped us to understand that
7 we're not alone and that people value us, and
8 they've just really kept us going actually.

9 Q. One final subject, Leah. Can you -- can you
10 tell us how you and your children are surviving
11 now?

12 A. Well, I'm glad you're using the word
13 "surviving," because, I guess, you know, that's
14 really the level that we're at, is surviving.
15 Well, as probably is evident in my disposition, I
16 always try to keep an optimistic and happy
17 disposition. I guess it's a defense mechanism to
18 help get through what we're going through. And
19 basically, Sholom's been away already for 5 and a
20 half months, and it's been very -- excuse me. It's
21 been -- it's been a very hard time. Obviously, not
22 having a father home for the children, not having a
23 husband home for the wife, is -- is a tragedy. And
24 it's very hard. And I think that anybody in that
25 situation, just walking away after having said

1 that, is enough for somebody to handle. But -- and
2 that's probably been the hardest thing of this
3 whole thing, has been -- has been that aspect of
4 it, of having to put the kids to sleep, and having
5 them ask for their father, and having to say,
6 "Well, sorry, it's after 9 o'clock. He can't call
7 anymore." And I can't say I'm lonely in my
8 bedroom, because I have 4 other kids sleeping in my
9 room because they're scared to sleep anywhere else
10 in this house because there's no security for them.
11 I guess they just feel like the rug's been pulled
12 out from under their feet, and so I have to put up
13 with a lot of things that typically I would put my
14 foot down and say "Go back to your room. Don't
15 knock on the door until 7 o'clock in the morning."
16 I can't do that now, because I understand what
17 they're going through and how hard it is for them
18 emotionally to deal with all this. So besides
19 having to be a wife without a husband, I have to be
20 stronger for them. And I -- excuse me.

21 MR. COOK: Thank you for your testimony,
22 Leah. No further questions.

23 THE COURT: Cross-examination?

24 MR. WILLIAMS: A moment, Your Honor.

25 (Mr. Williams conferred with Mr. Cook.)

1 MR. COOK: Before I sit down, Your Honor,
2 we would offer Exhibit 9100A-1.

3 THE COURT: And, I'm sorry, what is that?

4 MR. COOK: That's the picture of Sholom
5 Rubashkin when he graduated from the eighth grade.
6 9100A-1. And I'll provide the original to the
7 Court.

8 THE COURT: All right. Any objection
9 from the United States on that offer?

10 MR. WILLIAMS: No, Your Honor.

11 THE COURT: Received.

12 (Whereupon, Exhibit 9100A-1 was
13 received.)

14 CROSS-EXAMINATION

15 BY MR. WILLIAMS:

16 Q. Mrs. Rubashkin, I just want to ask you a
17 couple of questions. Your attorneys -- or the
18 attorneys for your husband displayed this
19 photograph on here, and it's actually part of a
20 print-off from a website, Equal and Fair Justice
21 for Sholom Rubashkin. They've marked it as
22 Exhibit 9305, and this was the photograph that was
23 being displayed earlier. You're familiar with this
24 website?

25 A. I've been made familiar with that website.

1 Q. Okay. And have you actually gone on that
2 website yourself before?

3 A. Yeah.

4 Q. Okay. And who set up this website?

5 A. I have no idea.

6 Q. Okay. There's a document at the top that you
7 can click on apparently, the Disparity
8 Memorandum -- or Memo. Are you familiar with that?

9 A. I think it's -- I think so, yeah. I mean,
10 I've seen it. I don't know what --

11 Q. Okay. And who drafted that Disparity Memo?

12 A. I'm not really sure.

13 Q. When was the first time you saw that
14 Disparity Memo?

15 A. I can't really say. I mean --

16 Q. Okay.

17 A. Last couple of, I don't know, maybe weeks. I
18 don't know. I'm not sure.

19 Q. All right. I'm just trying to figure out,
20 had you seen it before it got posted to this
21 website?

22 A. Did I see it?

23 Q. Yeah, the Disparity Memo, before it was --
24 have you seen it outside of this website, the
25 Disparity Memo?

1 A. I think some people printed it off, but I
2 don't know where it came from.

3 Q. And you don't know who drafted that Disparity
4 Memo?

5 A. Not specifically. Who authored it, like who
6 wrote it?

7 Q. Who wrote it.

8 A. I don't know.

9 Q. Okay. There's a reference that somebody, a
10 lawyer with knowledge of this case, was behind the
11 authorship of this Disparity Memo. Do you know who
12 that lawyer would be?

13 A. No, but a lot of them are here. You could
14 ask them.

15 Q. But you don't know?

16 A. No, I don't know.

17 Q. Okay.

18 MR. WILLIAMS: Your Honor, we would move
19 into evidence this Exhibit 9305.

20 THE COURT: And is that the -- what you
21 just displayed?

22 MR. WILLIAMS: It is, Your Honor.

23 THE COURT: Any objection?

24 MR. COOK: Well, the Rules of Evidence
25 don't apply, Your Honor. No objection. It was, of

1 course, offered before for the purpose of using a
2 photograph to show the son. Mr. Williams objected
3 to its use. And we marked it, and now he's decided
4 he wants to use it, so no objection.

5 THE COURT: All right. I think defense
6 is the one who showed it to the Court when it
7 wasn't an exhibit. Is that the one we're talking
8 about?

9 MR. WILLIAMS: That's correct, Your
10 Honor. And I didn't object to it. I just wanted
11 to know what it was so I could follow along.

12 THE COURT: Yes, I remember. No
13 objection -- or the Court does accept it for
14 whatever value it has.

15 (Whereupon, Exhibit 9305 was received.)

16 MR. WILLIAMS: No further questions, Your
17 Honor.

18 THE COURT: All right. Thank you. You
19 may step down. Any other evidence on behalf of the
20 defense?

21 (Defense counsel conferred.)

22 MR. COOK: No further witnesses at this
23 time, Your Honor. We might have surrebuttal if
24 there are rebuttal witnesses.

25 THE COURT: All right. Mr. Deegan,

1 Mr. Williams, any additional evidence?

2 MR. DEEGAN: Yes, Your Honor. At this
3 point, we anticipate a handful of rebuttal exhibits
4 and one witness. And I'll go ahead and call that
5 witness now, if it pleases the Court.

6 THE COURT: Yes.

7 MR. DEEGAN: I'll call Ms. Paula Roby.

8 THE COURT: All right. Good afternoon,
9 Ms. Roby.

10 PAULA LYNN ROBY,
11 called as a witness, being first duly sworn or
12 affirmed, was examined and testified as follows:

13 THE COURT: Please come to the witness
14 stand. And I don't know if there's water there or
15 not.

16 THE WITNESS: There is. Thank you,
17 Judge.

18 THE COURT: All right.

19 DIRECT EXAMINATION

20 BY MR. DEEGAN:

21 Q. Good afternoon, ma'am.

22 A. Good afternoon.

23 Q. Please state your name and spell it for the
24 record.

25 A. My name is Paula, P-A-U-L-A, Lynn, L-Y-N-N,