

1 the District Court that the medical judgment
2 may be exercised in light of all factors,
3 physical, emotional, psychological, familial
4 and the woman's age relative to the well-being
5 of the patient, correct?

6 A. Correct.

7 Q. The Court says all these factors may relate to
8 health, correct?

9 A. Correct.

10 Q. The Court says this allows the attending
11 physician the rule he needs to make his best
12 medical judgment and it is a rule that is
13 raised for the benefit, not the disadvantage
14 of the pregnant woman, correct?

15 A. Yes.

16 Q. And on the form, the form letter that the
17 prosecutor showed you earlier on the board,
18 the one-paragraph letter, one of the findings
19 in that is that it discusses a substantial --
20 let me put that differently. You would
21 find on particular patients that continuation
22 of the pregnancy would cause a substantial
23 and irreversible impairment of her -- of
24 the woman's physical or mental health,
25 correct?

1 A. Correct.

2 Q. And around the time that you talked to
3 Dr. Tiller in 1999, the language, substantial
4 or irreversible impairment of a major bodily
5 function was new language that came into the
6 law in July of 1998, is that right?

7 A. Yes.

8 Q. So as you are talking to Dr. Tiller, you are
9 becoming familiar with this new language of
10 the law, correct?

11 A. Correct.

12 Q. Then back to Defendant's Exhibit 24, that is a
13 fax from the Triplett, Woolf and Garretson --

14 A. Yes.

15 Q. -- law firm, isn't it?

16 A. Yes, it is.

17 Q. And that's a fax that was sent to you,
18 Dr. Kris Neuhaus?

19 A. Apparently so, yes.

20 Q. And was sent to the fax number 785-865-3875,
21 correct?

22 A. That was my fax number.

23 Q. And it's also sent to C. Warner Eisenbise at
24 fax number 316-263-2798, correct?

25 A. Correct.

1 Q. That's your dad?

2 A. Yes.

3 Q. So it's sent to you up in the eastern Kansas
4 area, sent to him here in Wichita, correct?

5 A. Correct.

6 Q. And was sent by Rachel Pirner of the Triplett,
7 Woolf and Garretson firm, correct?

8 A. Yes.

9 Q. And did you receive that copy of the law, that
10 copy of Doe versus Bolton and did you discuss
11 it with your lawyer, your father?

12 A. Yes.

13 MR. MONNAT: Your Honor, I'd move to
14 admit Defendant's Exhibit 24, please.

15 MR. DISNEY: Your Honor, could we
16 approach?

17 THE COURT: Yes.

18 (The following discussion
19 was had outside the
20 hearing of the jury at the
21 bench:)

22 MR. DISNEY: Your Honor, my soul
23 concern is the amount of law that is contained
24 within that and it has the statute. I'm just
25 afraid of what use he might make of it. I let

1 Mr. Monnat go on with his questions, but I'm
2 afraid the case law that you -- I'm afraid
3 that has some sort of construction to it, what
4 they might make of this. That's just a
5 concern.

6 MR. MONNAT: I don't see a problem
7 with that. It goes to the heart of the issue.
8 This was an exchange of documents between
9 Dr. Tiller and his lawyers and her lawyer.

10 MR. DISNEY: I would ask that we give
11 an instruction that they are not to use this
12 as law in the case.

13 MS. SHANEYFELT: It is the statute.

14 MR. MONNAT: It is the statute of the
15 law.

16 MR. DISNEY: Well, but can they still
17 use that as the law? I mean, that's my
18 concern. It's just what he's pointed out,
19 it's the law. This isn't something that you
20 are instructing them on. We're going to lose
21 control of it if we give them this.

22 THE COURT: I'll say that the subject
23 matter is not really what's being attempted to
24 being offered, but to be fair, I will advise
25 the jury that it's for purposes other than for

1 them to refer to for that. It's to advise
2 them on the subject matter.

3 MR. DISNEY: With that --

4 MR. MONNAT: I'd be happy to admit it
5 subject to -- I won't publish it to them other
6 than the fifth page --

7 MR. DISNEY: That's fine.

8 MR. MONNAT: -- and admit it now
9 subject to a limiting instruction that we give
10 later on which we can trade off and make sure
11 we agree on it.

12 MR. DISNEY: I will accept that.

13 THE COURT: I will explain it to
14 them. We'll admit it and you'll work that
15 out.

16 MR. MONNAT: That's fine. I'll
17 probably admit it and show that fax page and
18 then end for the day.

19 THE COURT: Okay.

20 (The bench conference was
21 hereby concluded; after
22 which the following was had
23 within the presence of the
24 jury:)

25 THE COURT: Okay. I will admit

1 Defendant's Exhibit No. 24.

2 MR. MONNAT: May we publish that then
3 to the jury by showing it on the screen then,
4 please, Your Honor?

5 THE COURT: That's fine.

6 MR. MONNAT: Thank you, Your Honor.

7 Q. (By Mr. Monnat) Can you, Dr. Neuhaus, see that
8 on the screen behind you?

9 A. Yes, I can.

10 Q. And again, we've already talked about those
11 names. C. Warner Eisenbise is your father,
12 correct?

13 A. Yes.

14 Q. And Rachel Pirner, did you know her to be a
15 lawyer with Triplett, Woolf and Garretson
16 which appears as the law firm name at the top
17 of that page?

18 A. I didn't remember the name until this whole
19 proceeding, but yes.

20 Q. All right. You and your father discussed the
21 requirements of the law that was set forth in
22 the attachments to that fax, is that right?

23 A. That's correct.

24 Q. And after your discussion with your father,
25 were you satisfied that your consultations

1 with the women patients at Women's Healthcare
2 Services would be legal?

3 A. Yes, I was.

4 Q. And did you then begin consulting with
5 patients at Women's Healthcare Services?

6 A. Yes, I did.

7 Q. Now, Dr. Tiller didn't pay for your lawyer,
8 your dad, Warner Eisenbise, did he?

9 A. Not that I know of, no.

10 Q. But I mean, do you have any reason to think --

11 A. No, of course not, not at all.

12 Q. And, in fact, did your father ever charge you
13 for giving his daughter legal advice about a
14 medical consultation that she was about to go
15 into?

16 A. No, no, he did not.

17 Q. No charge from your dad?

18 A. No.

19 Q. I guess because --

20 A. No.

21 Q. -- because he loves you?

22 A. Probably. I don't know why, but no -- yeah,
23 he never has in the past.

24 Q. Okay. Never has charged you?

25 A. No.

1 MR. MONNAT: Your Honor, that would
2 be a good stopping point for me today if it
3 please the Court.

4 THE COURT: Okay. Let's go ahead and
5 recess for the day. You just need to remember
6 the admonishments that I've given to you.
7 That will last throughout the trial and
8 we'll go ahead and excuse you for the day and
9 we'll be ready to resume tomorrow morning at
10 9 o'clock, so if you'll just be back here by
11 then.

12 (The jury left the
13 courtroom and court was
14 hereby adjourned for the day
15 at 4:55 p.m.)
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25

1 STATE OF KANSAS)

2) ss:

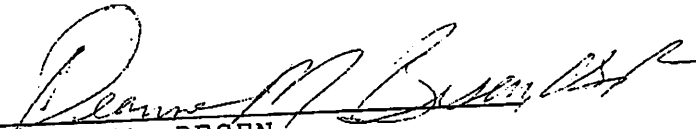
3 SEDGWICK COUNTY)

4
5 C-E-R-T-I-F-I-C-A-T-E

6 I, Deanne M. Besen, a Certified
7 Shorthand Reporter, under and by virtue of the
8 laws of the State of Kansas, and a regularly
9 appointed, qualified and acting Official
10 Reporter of the Eighteenth Judicial District
11 of the State of Kansas, do hereby certify
12 that as such Official Reporter, I was present
13 at and reported in machine shorthand the
14 above and foregoing proceedings in Case
15 No. 07 CR 2112, heard on March 23, 2009,
16 before the Honorable Clark Owens, Judge of
17 Division No. 20 of said court;

18 That thereafter, upon the oral order
19 or request received on March 23, 2009, I
20 personally prepared the foregoing transcript,
21 by means of computer-aided transcription,
22 consisting of 54 typewritten pages, and that
23 said transcript is a true and correct
24 transcript of my shorthand notes, all to the
25 best of my knowledge and ability.

SIGNED and OFFICIALLY SEALED this
23rd day of March, 2009.

18 
19 DEANNE M. BESEN
20 Certified Shorthand Reporter
21
22
23
24
25

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

STATE OF KANSAS,)
)
 Plaintiff,)
)
)
 vs.) Case No. 07 CR 2112
)
)
 GEORGE R. TILLER,)
)
 Defendant.)

JURY TRIAL

PROCEEDINGS had and entered of record on March 24, 2009, before the Honorable Clark V. Owens, II, Judge of Division 20, Eighteenth Judicial District, Sedgwick County, Kansas.

APPEARANCES:

For the Plaintiff: Barry K. Disney
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For the Defendant: Daniel E. Monnat
Laura B. Shaneyfelt
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For Dr. Neuhaus: Jack Focht
 Foulston Siefkin
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 Wichita, Kansas 67206

I N D E X

WITNESSES

DIRECT CROSS REDIRECT RECROSS

KRISTIN NEUHAUS
by Mr. Monnat
(continued)

3

E X H I B I T S

Offered

Admitted

Defendant's Exhibit 1
(software report)

24

24

Defendant's Exhibit 2
(software report)

26

26

1 THE COURT: Anything we need to bring
2 up before bringing in the jury this morning?

3 MR. DISNEY: Nothing for the State.

4 MR. MONNAT: Nothing by Dr. Tiller,
5 Your Honor.

6 THE COURT: Okay. You may bring in
7 the jury.

8 (Thereupon, the jury was seated in the
9 courtroom.)

10 THE COURT: Okay. Mr. Monnat, you may
11 continue with your cross examination.

12 MR. MONNAT: Thank you, Your Honor.
13 May it please the Court, ladies and gentlemen of
14 the jury.

15 BY MR. MONNAT:

16 Q. Yesterday when we stopped we were talking about
17 the conference you had with your father, Warner
18 Eisenbise, after you received some material,
19 Defense Exhibit 24, from Rachel Pirner.
20 Correct?

21 A. Yes.

22 Q. Now, I know that on direct examination the
23 prosecutor asked you a number of questions about
24 those consultations with or without lawyers for
25 Dr. Tiller. Do you remember that?

1 A. Yes, I do.

2 Q. Would it be fair to say that your conversations
3 about beginning to give consultations with women
4 at Women's Health Care Services were in 1999?

5 A. Yes.

6 Q. But the first time anybody asked you to account
7 precisely about how those conversations and
8 conferences took place was about seven years
9 later on December 8th of 2006?

10 A. That's correct.

11 Q. And December 8th of 2006 was when you were
12 interrogated at the inquisition that Mr. Disney
13 showed the transcript pages of; is that right?

14 A. Correct.

15 Q. And is it a little difficult now, almost ten
16 years later, to itemize for the jury in exactly
17 what order those conferences and consultations
18 took place?

19 A. Yes.

20 Q. Would it be fair to say, though, that after the
21 consultation with your father and after you
22 talked to Dr. Tiller, was it your understanding
23 that your consulting with Women's Health Care
24 Services' patients was a compromise for the
25 State of Kansas?

1 A. That was my understanding.

2 Q. And it was -- was it your understanding that the
3 State recognized or worried that the two Kansas
4 physician rule may be unconstitutional?

5 A. Yes.

6 MR. DISNEY: Your Honor, object as to
7 hearsay.

8 MR. MONNAT: Just asking her
9 understanding.

10 MR. DISNEY: Well, it's based on
11 hearsay.

12 THE COURT: Well, depends on where it
13 came from, her information, so I'll sustain the
14 objection unless they can provide more
15 foundation.

16 BY MR. MONNAT:

17 Q. The questions that were asked of you in December
18 of 2006, a transcript of those has been made; is
19 that right?

20 A. Yes.

21 Q. And by transcript, we mean a typed-up question
22 and answer version like was shown on the screen
23 yesterday?

24 A. Correct.

25 Q. And you may not know it, but do you have any

1 reason to doubt that I have a copy of that?

2 A. No, I don't doubt it.

3 Q. And when you were asked questions at that
4 December 8th, 2006, interview, you were asked
5 about what your understanding was around the
6 time you began to do consultations for patients
7 at Women's Health Care Services. Correct?

8 A. I can't remember him actually asking me what my
9 understanding was, but that's -- that probably
10 is the case.

11 Q. And do you remember explaining, during the
12 course of the deposition --

13 MR. DISNEY: Your Honor --

14 BY MR. MONNAT:

15 Q. -- what your understanding was?

16 MR. DISNEY: -- object to the line of
17 questions trying to elicit hearsay which you've
18 just ruled on. I mean, he's doing the very same
19 thing that you just told him not to.

20 MR. MONNAT: I'm not aware of that,
21 Judge.

22 MR. DISNEY: I am.

23 THE COURT: Okay. Well, I'll sustain
24 the objection.

25 BY MR. MONNAT:

1 Q. You talked to Dr. Tiller before you began doing
2 the consultations at Women's Health Care
3 Services in 1999?

4 A. Yes.

5 Q. And you talked to your father before you began
6 doing the consultations. Correct?

7 A. Yes.

8 Q. And as a result of those conversations with
9 those two people, what was your understanding
10 about beginning the consultations and the two
11 Kansas physician rule?

12 MR. DISNEY: Your Honor, object to any
13 statement made by the defendant as it's hearsay,
14 and anything that she's going to say that
15 defendant said is hearsay. I understand her
16 father is here and is available, so I don't have
17 an objection to that. This is the same
18 objection I've had.

19 MR. MONNAT: And it's being offered
20 not for the truth but to show what her
21 understanding was and her state of mind was when
22 she started.

23 THE COURT: I don't think that can be
24 distinguished at this point, so I'm going to
25 sustain the objection.

1 A. I don't remember what anybody said --

2 THE COURT: You can't answer right now
3 on that question.

4 BY MR. MONNAT:

5 Q. You shared with us earlier that you had the
6 practice in Lawrence in 1999 that you took over
7 from Dr. Clinton?

8 A. Yes.

9 Q. And most of the ladies and gentlemen of the jury
10 probably know this, but just for the record, how
11 far is Lawrence, Kansas from Wichita, Kansas?

12 A. About two and a half hours drive.

13 Q. All right. When you consulted with patients at
14 Women's Health Care Services who were you paid
15 by?

16 A. The patients.

17 Q. And was that always the case?

18 A. Yes.

19 Q. At Women's Health Care Services whether someone
20 was eligible for a later-term abortion was an
21 ongoing process. Correct?

22 A. Yes.

23 Q. And ordinarily did it begin with an extensive
24 telephone interview of the patient by one of the
25 staff at Women's Health Care Services?

- 1 A. Yes.
- 2 Q. And that was one of the documents that you
3 talked about yesterday and was shown on the
4 screen. Correct?
- 5 A. Yes.
- 6 Q. I've got what has been admitted as State's
7 Exhibit B on the screen, and that's the MI
8 statement that the staff at Women's Health Care
9 Services used to conduct a telephone interview
10 of a potential patient; is that right?
- 11 A. Yes.
- 12 Q. And was that telephone procedure particularly
13 necessary if the patient might be traveling here
14 from another state?
- 15 A. Yes.
- 16 Q. And was it particularly necessary if the patient
17 might be traveling here from another country?
- 18 A. Yes.
- 19 Q. And just share with the ladies and gentlemen on
20 the jury why that was.
- 21 A. So that, if possible, people wouldn't make the
22 trip for no reason, they wouldn't get all the
23 way there and not be qualified for being
24 evaluated for a procedure, so that they wouldn't
25 come all the way from England or Japan or some

1 places that people would come from and then not
2 be eligible to even be considered for a
3 procedure.

4 Q. Is it fair to say then that the procedure at
5 Women's Health Care Services as it related to
6 eligibility was kind of an ongoing screening
7 process?

8 A. Correct.

9 Q. Because even after staff did an initial
10 interview like is contained on State's Exhibit
11 B, do you know if that would be reviewed by Dr.
12 Tiller before the patient was invited to come?

13 MR. DISNEY: Your Honor, object as to
14 hearsay unless he can lay some foundation as to
15 how she would know.

16 MR. MONNAT: We asked her about all
17 kinds of procedures yesterday at Women's Health
18 Care Services, Your Honor.

19 A. Well, I can give some foundation.

20 MR. DISNEY: I have an objection
21 unless there's some foundation. It's calling
22 for her to say what Women's Health Care Services
23 does. How would she know that?

24 THE COURT: I'm going to overrule the
25 objection.

1 MR. MONNAT: You may answer.

2 A. Well, because I was interested in the process, I
3 did ask about that. My understanding was that
4 the patient would be interviewed on the
5 telephone. Then that interview would have to be
6 reviewed by Dr. Tiller before they could even be
7 given an appointment.

8 Q. So maybe even if the staff thought that based on
9 this interview the patient was eligible, it was
10 your understanding that Dr. Tiller could veto
11 that?

12 A. Absolutely.

13 Q. And then --

14 A. Not veto it. He had to approve it, so it was an
15 active approval.

16 Q. Okay. I'm sorry.

17 A. I'm sorry.

18 Q. I didn't ask that correctly.

19 A. That is a difference.

20 Q. And as I understand it, even though the patient
21 might be invited to come, you would do your own
22 interview of the patient and determine
23 eligibility?

24 A. Yes.

25 Q. And when the patients were screened over the

1 telephone by Women's Health Care Services; did
2 the procedure inform them that Kansas law
3 required a referral from a second Kansas
4 physician?

5 A. Yes.

6 Q. And were the patients also told by the procedure
7 at Women's Health Care Services and the staff
8 that any fee of the second Kansas physician
9 would be a separate fee and would not be
10 included in the patient's fees for Dr. Tiller?

11 A. Yes.

12 Q. Now, when you would meet with the patients how
13 would you handle the financial arrangement with
14 the patient, if you would tell the jury.

15 A. I would collect the fee myself. I explained
16 that there was a separate fee, and they were
17 generally always aware of that. And a few
18 occasions they would either act like they didn't
19 know or say that they didn't know, but they were
20 made aware again. But 99.9 percent of the time
21 they were already fully aware of that.

22 Q. All right. And I think Mr. Disney asked you
23 about this yesterday. Would you tell the staff
24 at Women's Health Care Services what your charge
25 would be to consult with the patient?

- 1 A. Yes.
- 2 Q. You'd tell them the amount of it?
- 3 A. Correct. So that they would have the funds
- 4 available.
- 5 Q. So that the patient would have the funds
- 6 available when they arrived in Wichita?
- 7 A. Right.
- 8 Q. And would you tell the staff at Women's Health
- 9 Care Services how you wished the patient to pay
- 10 your consultation fee?
- 11 A. Correct. Since the vast majority of people were
- 12 from out of state, it would be difficult to take
- 13 an out-of-state check. And I had a few people
- 14 give me a check and then cancel it or have it
- 15 not be a valid check, so I quit taking checks
- 16 fairly early in the process.
- 17 Q. And then you asked that the staff at Women's
- 18 Health Care Services tell the patient to pay you
- 19 half?
- 20 A. In cash.
- 21 Q. All right. And I suppose that if a check
- 22 bounced and the person lived in another country
- 23 it would be that much harder to collect on the
- 24 check?
- 25 A. I actually had a doctor cancel a check on me so

- 1 -- about 15 minutes after he left the building.
- 2 Q. I just didn't want you to risk compromising any
- 3 patient privacy. I don't mean to cut you off.
- 4 A. Right.
- 5 Q. You had some preprinted bills of your own that
- 6 you would give to the patients for your
- 7 services; is that right?
- 8 A. Yes.
- 9 Q. And did they have Dr. Tiller's name on those
- 10 preprinted bills?
- 11 A. No.
- 12 Q. Did they have Women's Health Care Services' name
- 13 on those preprinted bills?
- 14 A. No.
- 15 Q. Either before or when you arrived at Women's
- 16 Health Care Services clinic, you would request
- 17 any information that the clinic had pertinent to
- 18 the patient's medical case. Correct?
- 19 A. Yes.
- 20 Q. And you mentioned yesterday that sometimes you
- 21 would do telephone interviews. When you would
- 22 do a telephone interview, would you also request
- 23 in advance the information that the clinic had
- 24 pertinent to the patient's medical case?
- 25 A. Yes.

1 Q. Tell the ladies and gentlemen on the jury, would
2 the information that Women's Health Care
3 Services had often include medical information
4 from a foreign state or country?

5 A. Yes.

6 Q. Would you tell the ladies and gentlemen of the
7 jury how that came about, please.

8 A. How I received it?

9 Q. Just -- well, let me ask you, often the records
10 you reviewed would include any medical records
11 that the patient had brought with them. Right?

12 A. Yes.

13 Q. Or medical records that the patient had had
14 forwarded by their doctor or OBGYN in a foreign
15 state or country; is that right?

16 A. Yes.

17 Q. Because the patient presented -- coming to
18 Women's Health Care Services had often already
19 seen another doctor in a foreign state or a
20 foreign country about the procedure?

21 A. Yes.

22 Q. And was it your understanding that often the
23 doctor in the foreign state or country had
24 referred the patient to Women's Health Care
25 Services?

1 A. Yes.

2 Q. But around 1999 the out-of-state or
3 out-of-country doctor's referral was interpreted
4 not to meet the requirements of Kansas law; is
5 that your understanding?

6 A. That's correct.

7 Q. When those records would be forwarded or brought
8 to Women's Health Care Services, would they be
9 presented to you before your interview with the
10 patient?

11 A. Yes.

12 Q. And would you review those records?

13 A. Yes, I would.

14 Q. And would you just share with the ladies and
15 gentlemen on the jury what kind of interview or
16 evaluation you would conduct with the patient.
17 Let me withdraw that question. Just as a
18 preliminary matter, we talked about the Doe
19 versus Bolton case yesterday --

20 A. Yes.

21 Q. -- and the new portion of the law that came into
22 effect July 1st of 1998. Would it be fair to
23 say that many of the patients you were
24 evaluating were being evaluated to determine if
25 continuation of the pregnancy would cause a

1 substantial or irreversible impairment of a
2 mental function?

3 A. Yes.

4 Q. So just explain to the ladies and gentlemen on
5 the jury what kind of interview you would
6 conduct with the patient.

7 A. I use a very, very open-ended interview style.
8 Basically I just ask people to tell me what's
9 going on and I let them talk a lot. I usually
10 try to allow the patient to be as free as
11 possible to express themselves, and I find that
12 it's a lot more fruitful interview than to have
13 a list of real specific questions. I do have
14 specific questions, of course, too, but I try to
15 really allow them to open up and tell me about
16 their life and what their situation is and how
17 everything kind of fits into the big picture for
18 them. I found that to be a lot more accurate at
19 getting at where they are in their life, and so
20 I -- it's very, very open-ended in that sense.
21 And then when I've allowed them to talk as much
22 as they need to and try to be supportive and
23 basically encourage them to open up then at the
24 end of that I'll look at what I still need to
25 know and don't quite understand and then I will

1 fill in my interview from that point. But I
2 also have to be able to document basically what
3 their state of mind is in -- within the format
4 that's used by the medical profession, which is
5 coding based on certain diagnoses. So basically
6 as they go through their telling of their story
7 and I fill in with my questions, I can use that
8 to clarify their state of mind according to the
9 current diagnostic code that we talked about
10 yesterday, the DSM-IV or other potential medical
11 codes that wouldn't be in the DSM-IV, more
12 medically-related things, like fetal indications
13 and things.

14 Q. And I -- one of the things you just mentioned
15 was you have to be able to document it in a
16 medical way. Correct?

17 A. Correct.

18 Q. And when you started doing consultations with
19 patients at Women's Health Care Services, we
20 talked a little bit about the fact yesterday
21 that you felt it was important to be able to
22 document any referral to Dr. Tiller in a legal
23 way.

24 A. Correct.

25 Q. And we talked a little bit yesterday and

1 Mr. Disney asked you questions about the
2 one-paragraph form letter which -- I'll go ahead
3 and put it on the board, Exhibit 15. You recall
4 being asked questions about that letter
5 yesterday?

6 A. Yes.

7 Q. And just maybe share with the ladies and
8 gentlemen on the jury why you wanted to have
9 kind of a form letter that you could use if you
10 found the patient was eligible for an abortion.

11 A. To be in compliance with the new law, the new
12 regulations.

13 Q. Okay. And the new law had some specific, pretty
14 specific wording. Correct?

15 A. Correct.

16 Q. For instance, if in this letter you said the
17 patient would suffer substantial impairment of a
18 major physical or mental function, would that be
19 sufficient?

20 A. To comply with the law?

21 Q. Yes.

22 A. As I understand it, yes.

23 Q. If it said the patient would suffer substantial
24 impairment of a major physical --

25 A. Substantial and irreversible. I'm sorry.

- 1 Q. Right. So if you left out the word
2 irreversible, what could happen?
- 3 A. That it wouldn't meet the requirements of the
4 law.
- 5 Q. And what could happen if you didn't meet the
6 absolute requirements of the law?
- 7 A. The provider physician could be charged with
8 criminal charges, criminal --
- 9 Q. And maybe the consultant could too?
- 10 A. As my -- as my understanding that it would be
11 like a conspiracy or something.
- 12 Q. Is it fair to say then that as a result of
13 focussing on the letter of the law and
14 conferring with your lawyer a kind of form
15 letter was drawn up to ensure compliance with
16 the law?
- 17 A. Yes.
- 18 Q. And was it the idea that if you consulted with
19 one of the patients and determined that the
20 patient was eligible for an abortion, you didn't
21 have to reinvent the wheel every time and on
22 your own remember the exact wording of the law?
- 23 A. Correct.
- 24 Q. Like we -- like many of us do our jobs, you had
25 a form that you knew complied with the law and

1 you could use?

2 A. Correct.

3 Q. When you first started doing interviews with
4 patients at Women's Health Care Services and you
5 did your evaluation, how did you take down the
6 information?

7 A. Handwritten notes.

8 Q. And then did you eventually change to using a
9 computer?

10 A. Yes.

11 Q. And when you started using the computer did you
12 use a software program in the computer?

13 A. Yes.

14 Q. And what was that software program called?

15 A. It's a professional software program called
16 dTree.

17 Q. And by the way, being licensed as a medical
18 doctor in Kansas, does that permit you to do
19 mental health evaluations?

20 A. It's part of the general purview of family or
21 general practice, yes.

22 Q. All right. Now, the dTree software program, did
23 that allow you to enter answers to questions
24 from the Diagnostic Statistical Manual?

25 A. Basically it just -- it's a computerized

1 algorithm, so it goes through a list of
2 questions and sorts the material into the
3 diagnostic categories.

4 Q. And then does that help you in arriving at your
5 diagnosis?

6 A. Well, it could. It's actually designed so that
7 non-terminal degree professionals could use it,
8 so you wouldn't have to be a clinical
9 psychologist or a physician or psychiatrist to
10 use it but -- that's not the way that I used it,
11 but it could be used in that way.

12 Q. Okay. And just share with the ladies and
13 gentlemen on the jury how you used it, or have
14 you already given them that answer?

15 A. I don't know. I actually used it to just -- to
16 be able to record all the information quickly
17 and readily and thoroughly.

18 Q. All right. And the dTree software, is it also
19 related to the global assessment functioning?

20 A. That's another module.

21 Q. All right. Can you just explain to the ladies
22 and gentlemen on the jury how that worked.

23 A. Well, mental health profession -- professionals
24 use what's called a GAF score, a global
25 assessment of function, to be able to assess a

1 person over a period of time or even as a single
2 interview to see what their level of functioning
3 is. That's why it's called global. It's all
4 ranges of your functional level, like how well
5 are you communicating with the people around
6 you, how well are you doing at your work, at
7 your place of, you know, business or school.
8 It's basically a way of kind of keeping track of
9 a person over a period of time, but it's also
10 used in the emergency room or whatever for
11 single-interview situations, just to assess how
12 functional is a person from a mental health
13 standpoint at that point.

14 Q. All right. So in evaluating patients at Women's
15 Health Care Services, after you stopped hand
16 writing them you were documenting your interview
17 of the patient with the software in your
18 computer as to the global assessment functioning
19 and as to the dTree. Am I right?

20 A. Yes.

21 Q. And if we could put Defendant's Exhibit 1 -- let
22 me ask you if you'd look at the book there and
23 look at Defendant's Exhibit 1, please.

24 A. Okay.

25 Q. Now, Defendant's Exhibit 1, do you recognize

1 what that is, despite the fact that it's heavily
2 redacted to preserve patient privacy?

3 A. Yes.

4 Q. And what is that, please?

5 A. That's a report from the software program that I
6 used.

7 Q. All right. And that's a report for the software
8 program that you used in consulting with
9 patients at Women's Health Care Services?

10 A. Yes.

11 MR. MONNAT: Your Honor, I'd move to
12 admit Defendant's Exhibit 1, please.

13 MR. DISNEY: No objection.

14 MR. MONNAT: May we display that to
15 the jury, please?

16 THE COURT: Very well. Defendant's
17 Exhibit 1 will be admitted.

18 BY MR. MONNAT:

19 Q. All right. Now with respect to Defendant's
20 Exhibit 1, all those bold black bars usually
21 don't exist on your global assessment
22 functioning reports, do they?

23 A. No.

24 Q. Those have all been placed here to preserve the
25 privacy of the patient regarding the information

1 that you obtained from the patient. Do you
2 understand that?

3 A. Yes.

4 Q. But as to your evaluations of patients at
5 Women's Health Care Services, would you usually
6 produce a report that would look like the
7 unredacted version of Defendant's Exhibit 1?

8 A. Yes.

9 Q. Let me then ask you if you would please take a
10 look at Defendant's Exhibit 2 in the notebook in
11 front of you.

12 A. Okay.

13 Q. Could you share with the ladies and gentlemen on
14 the jury whether you recognize that and, if so,
15 what it is.

16 A. That's a report from the dTree module of the
17 program of an example of what I would use at
18 Women's Health Care Services.

19 Q. And would that be one of the tools and reports
20 you used between July of 2003 and November of
21 2003 --

22 A. Yes.

23 Q. -- in evaluating patients at Women's Health Care
24 Services?

25 A. Well, technically I was using it for recording.

1 Q. I'm sorry.

2 A. But -- right.

3 MR. MONNAT: I move to admit
4 Defendant's Exhibit 2, Your Honor, and for
5 permission to display it.

6 MR. DISNEY: No objection.

7 THE COURT: Defendant's Exhibit 2 will
8 be admitted.

9 MR. MONNAT: Thank you, Your Honor.

10 BY MR. MONNAT:

11 Q. Looking at Defendant's Exhibit 2, again, and in
12 the exhibit notebook, that's a two-page
13 document; is that correct?

14 A. It could go up to four but generally two.

15 Q. Okay. And the one in your notebook there is two
16 pages?

17 A. Is two.

18 Q. And with regard to the GAF report before,
19 Defendant's Exhibit 1, that also was a two-page
20 report?

21 A. Yes. The length of it varied on -- depending on
22 the responses of the patient.

23 Q. Defendant's Exhibit 2 that's now on the screen
24 again, when you made it it didn't have the big
25 black bars. Those have been added for patient

1 privacy, to protect the information collected
2 from the patient. Correct?

3 A. Correct.

4 Q. And is that -- well, strike that. The dTree
5 program and the global assessment functioning
6 program or software, did you bring those to
7 Women's Health Care Services on your own laptop
8 computer?

9 A. Yes.

10 Q. And who paid for that computer?

11 A. I did.

12 Q. And who paid for the dTree or global assessment
13 functioning software?

14 A. I did.

15 Q. And were both of those programs licensed only to
16 you?

17 A. Yes, they were.

18 Q. Did either of those -- was either of those
19 programs installed on any of the computers at
20 Women's Health Care Services?

21 A. No. You couldn't even move the program without
22 getting a special key. You had to have a
23 special diskette and everything.

24 Q. And had you become familiar with those programs
25 in the course of your formal medical education?

1 A. With the material. The software didn't exist at
2 the time. It's fairly new.

3 Q. All right. So before the software you just had
4 to do that all by hand?

5 A. Exactly.

6 Q. Now, once you entered the information into your
7 laptop computer on the dTree or global
8 assessment functioning software, you could
9 either print that out or you could leave it on
10 the hard drive. Right?

11 A. Yes.

12 Q. And in the course of 2003 and consulting with
13 patients at Women's Health Care Services, you
14 might print the dTree or GAF reports out and
15 give those to Dr. Tiller while you were at the
16 clinic or you might e-mail or fax them back
17 later; is that right?

18 A. Yes. Not e-mail but fax or -- or leave.

19 Q. So is it fair to say that since you needed to
20 enter data in the GAF and dTree programs that
21 almost always -- well, strike that -- always in
22 2003 you brought your laptop computer to Women's
23 Health Care Services?

24 A. The details of that I don't recall exactly so I
25 don't want to commit to it, but I believe that I

1 had it most of the time. Because at some point
2 I quit bringing it, but I don't remember when.
3 Q. You quit bringing the laptop computer?
4 A. At some point later on, but I don't think it was
5 anywhere in 2003. I think it was much later.
6 Q. All right. And when you would go to Women's
7 Health Care Services and you were interviewing
8 patients, that meant that there was a patient at
9 Women's Health Care Services who was seeking an
10 abortion. Correct?
11 A. Yes.
12 Q. And so one thing that had to be done before you
13 left town to go back to Lawrence was any
14 documented referral of a patient that you
15 approved had to be provided to Dr. Tiller in a
16 document. Right?
17 A. Yes.
18 Q. Otherwise, Dr. Tiller couldn't begin the
19 procedure that you thought was justified until
20 you got him a document confirming it was
21 necessary?
22 A. Yes.
23 Q. Because the referral, according to the law, had
24 to be documented?
25 A. Correct.

1 Q. And that meant it had to be in handwriting or
2 typing or something of that sort. Correct?

3 A. Correct.

4 Q. And, again, that's one reason that the
5 one-paragraph letter that we've talked about
6 earlier was used. Correct?

7 A. Yes.

8 Q. If the referral wasn't documented by the time
9 you headed back to Lawrence then the patient
10 from London or Montana had to wait around until
11 you got that one-paragraph letter to Dr. Tiller?

12 A. Yes.

13 Q. If the procedure was justified?

14 A. Correct.

15 Q. Now, the GAF and the dTree weren't necessary for
16 a documented referral, were they?

17 A. No.

18 Q. You could print those out from a printer you
19 were familiar with back in Lawrence and fax them
20 to Women's Health Care Services?

21 A. Yes.

22 Q. But the documented referral, the one-paragraph
23 letter, had to be done before you left town
24 unless the patient was going to be stranded
25 there without the procedure that you intended to

1 recommend?

2 A. Right.

3 Q. Now, I'm not sure that we clarified this
4 yesterday, but originally that one-paragraph
5 letter, Exhibit 15, was on the hard drive of
6 your laptop computer; is that right?

7 A. Yes.

8 Q. But when you found an abortion to be necessary,
9 you would have to somehow print that letter out
10 from your laptop so that you could leave that
11 documented referral with Dr. Tiller when you
12 returned to Lawrence. Right?

13 A. That's right.

14 Q. Now, in the beginning did you lug a printer down
15 with you from Lawrence to use with your laptop
16 computer?

17 A. Yes, I did.

18 Q. And did you make some arrangements so that you
19 could always have that printer available at
20 Women's Health Care Services so you could print
21 out this one-paragraph letter?

22 A. Yes, I did.

23 Q. Share with the ladies and gentlemen on the jury
24 what you did.

25 A. Well, I brought the computer down and plugged it

1 in and kept it in an out-of-the-way place so
2 that I could come in and hook it up and print
3 out the letter.
4 Q. All right. So you left the computer there or
5 the printer there?
6 A. I left the printer there.
7 Q. All right. And did that always work out?
8 A. Well, no.
9 Q. Well, what happened?
10 A. The printer didn't always work or -- it was an
11 old printer and I couldn't get the right
12 cartridges for it after a while.
13 Q. All right.
14 A. And then I changed laptops and then somehow the
15 formatting changed and it was printing like four
16 times the size, and I couldn't figure out how to
17 get that printer to work so then I had to start
18 using another printer in the office. So I'd
19 have to go in and disconnect everything and plug
20 mine in and print it out.
21 Q. Yeah. Just share with the ladies and gentlemen
22 on the jury just how complicated that last
23 procedure you mentioned was.
24 A. Well, it would mean that I would have to go into
25 an office that was being used for another

1 purpose, disconnect the printer that was being
2 used there, plug in my printer, print the letter
3 out, disconnect it and replug the other one. I
4 would have to wait until that office was open
5 and somebody wasn't using it. So it caused
6 some, you know, technical issues.

7 Q. Okay. How practical was that process?

8 A. It was not very practical.

9 Q. Did it seem to make much common sense to you?

10 A. No.

11 Q. So what procedure did you then adopt so that you
12 could print out this one-paragraph letter before
13 you left town?

14 A. I requested the office manager to include that
15 in the packet, to use my letter, the basic
16 letter that I'd been using, and to have her
17 print that out and include it in the patients'
18 packets --

19 Q. All right.

20 A. -- that I would get.

21 Q. When you say the patient's packet, you mean, for
22 instance, the medical records --

23 A. The medical records.

24 Q. -- from the doctor out of state or out of
25 country that had been sent. Right?

1 A. Yes.

2 Q. You meant the MI form that we looked at a few
3 minutes ago that the staff at Women's Health
4 Care Services would fill out during their
5 telephone interview?

6 A. Yes.

7 Q. And you meant that this letter, this
8 one-paragraph letter, unsigned, would come to
9 you with those other documents and the cover
10 sheet?

11 A. Yes.

12 Q. Did that procedure mean you were always going to
13 sign that preprinted letter?

14 A. No, of course not.

15 Q. Explain to the ladies and gentlemen on the jury
16 how you intended to use it and why.

17 A. I intended to use it if I was going to refer the
18 patient to Dr. Tiller as warranting a procedure
19 based on substantial and irreversible impairment
20 of a major bodily or major physical or mental
21 function, basically if I was planning on
22 referring them. Otherwise, I would just shred
23 the letter.

24 Q. And you were aware around this time that the law
25 required that Dr. Tiller's referral from a

1 second Kansas physician needed to be from a
2 physician that was not legally affiliated with
3 him. Correct?

4 A. Yes.

5 Q. So is it fair to say that you were always
6 vigilant to make sure that you took no actions
7 that someone could try to stretch into an
8 affiliation between you and Dr. Tiller?

9 A. That's correct.

10 Q. So what did you do to be vigilant about the use
11 of the clinic's printer?

12 A. I discussed with the office administrator
13 roughly what the cost would be and I paid her
14 that amount for the extra piece of paper and
15 whatever toner, you know, would cost.

16 Q. Was it any big amount of money?

17 A. Well, I estimated it would be less than \$50 a
18 year, so I always made sure that I paid her
19 about 50 to \$100 per year.

20 Q. All right. And how were those payments made?
21 In cash?

22 A. Cash. Right.

23 Q. Did you ever use computers at Women's Health
24 Care Services?

25 A. You mean other than my laptop?

- 1 Q. Yes, ma'am.
- 2 A. A few times I used a computer to look up
3 information on the Internet.
- 4 Q. All right. And what was the purpose of looking
5 up information on the Internet?
- 6 A. To provide information for the patients about
7 specific medical questions that they had,
8 laboratory or whatever.
- 9 Q. And on how many occasions do you think that took
10 place?
- 11 A. Two or three.
- 12 Q. And was that two or three in 2003 or two or
13 three over the period from 1999 to 2007?
- 14 A. The latter.
- 15 Q. When you would go to Women's Health Care
16 Services to consult with patients that would
17 always involve about a five-hour drive for you;
18 is that right?
- 19 A. That's correct.
- 20 Q. And how long would you generally spend with each
21 patient at Women's Health Care Services?
- 22 A. Well, I like to think that I spent the amount of
23 time that was necessary and that was roughly, on
24 the average, from 30 minutes to an hour, but it
25 could be much longer.

- 1 Q. All right. So you've told us what it was
2 generally and sometimes it could be even longer
3 than an hour. How long?
- 4 A. It could have happened over a period of several
5 days on certain occasions.
- 6 Q. When you would interview a woman at Women's
7 Health Care Services was there a special office
8 designed for you with your name on it?
- 9 A. No.
- 10 Q. Where would your interviews take place?
- 11 A. Generally in a waiting room or a little private
12 waiting room.
- 13 Q. And did it always -- strike that. Did the
14 patient interview always take place in the same
15 room at Women's Health Care Services?
- 16 A. No, it did not.
- 17 Q. And when you would do your interview at Women's
18 Health Care Services, tell the jury who else
19 would be present with you when you interviewed
20 the patient.
- 21 A. Significant others.
- 22 Q. Would there always be somebody with the patient?
- 23 A. No.
- 24 Q. So would it generally be the patient and
25 sometimes significant others, parents, husbands,

1 that sort of thing?

2 A. Yes.

3 Q. Was Dr. Tiller ever present during the
4 interviews of the patients?

5 A. No.

6 Q. Was any member of Dr. Tiller's staff ever
7 present other than when you maybe needed
8 somebody to translate Spanish?

9 A. No, they were not.

10 Q. You mentioned yesterday that sometimes it was
11 necessary to do telephone interviews, and the
12 prosecutor referred to those in his opening
13 statement as just kind of phoning it in. Were
14 those serious interviews?

15 A. Yes, they were.

16 Q. Would you explain to the ladies and gentlemen on
17 the jury how you conducted those. And you might
18 just move up a little bit closer to the
19 microphone so that everybody can hear a little
20 bit better, please.

21 A. It was done exactly the same way as it would
22 have been in person, only the patients were
23 often on speaker phone if there was more than
24 one person present. For example, if it was a
25 wife and a husband, then we would put it on a

1 speaker phone. Other than that, it might have
2 been on the hand set if it was just a single
3 person, but it was exactly the same format.
4 Basically I would just ask them to tell me their
5 story, the whole exact same function. The only
6 difference is that we weren't sitting and
7 looking at each other.

8 Q. And why were those telephone interviews
9 sometimes necessary?

10 A. Sometimes people would come in on an emergency
11 basis, for example, if a patient had an
12 obstetrical issue that was very urgent and
13 couldn't wait or if for some reason they had had
14 an appointment for an earlier time and their
15 flight was delayed or something and it happened
16 on a day that I just couldn't be there because
17 of my other obligations. It -- mostly just
18 urgent, urgent or emergent situations.

19 Q. And would you review anything before you would
20 do the telephone interview with the patient?

21 A. The materials that I normally would have gotten
22 in person would be faxed to me at my office at
23 my house.

24 Q. And would you review those before the telephone
25 interview of the patient?

1 A. Yes, I would.

2 Q. Did you regard these interviews as, in any sense
3 of the word, just phoning it in?

4 A. No. In fact, it's a common practice now that
5 many interviews are done by tel -- telemetry.

6 Q. And what's that last term mean?

7 A. Well, you know, because of the lack of providers
8 in remote areas this is a common practice. For
9 cardiology, psychiatry, a number of specialties
10 where there aren't enough specialists in these
11 remote areas, they'll teleconference. Even ICU
12 material is sometimes exchanged that way or
13 monitoring.

14 Q. Thank you, Doctor. Would you keep your own
15 files on the patients of the women that you saw
16 at Women's Health Care Services?

17 A. Yes.

18 Q. And generally what would your file contain?

19 A. The same -- basically it would contain my
20 consent forms, all the material that I received
21 from Dr. Tiller's office and my own reports and,
22 you know, occasionally handwritten notes as
23 well.

24 Q. And did you have certain HIPAA forms that had to
25 be --

- 1 A. Yes. All the -- I just kind of lumped that into
2 the consent forms.
- 3 Q. And what does HIPAA mean?
- 4 A. It basically is a long set of regulations that
5 protect patient privacy.
- 6 Q. And would you have each patient you consulted
7 with at Women's Health Care Services sign a
8 HIPAA privacy form that allowed you to disclose
9 health care information to Dr. Tiller?
- 10 A. Yes.
- 11 Q. And if you and Dr. Tiller were affiliated or
12 associated in the same practice, would you need
13 to sign such a form or have the patient sign
14 such a form?
- 15 A. No, we would not.
- 16 Q. And explain to the jury why that is.
- 17 A. Because if you're in a shared practice you have
18 common access to all the files anyway so it
19 would make it difficult or ridiculously
20 complicated if, you know -- if you had to have
21 disclosure for every single person in the
22 practice.
- 23 Q. Thank you. Since before 1999 and up to the
24 present, you have been a member of practices
25 that performed abortions. Correct?

- 1 A. Yes.
- 2 Q. And as an abortion provider you have kept
3 informed of the items of national news that
4 affect women's rights to abortions?
- 5 A. Yes.
- 6 Q. And I take it that you learned, for instance,
7 that a Dr. Gunn from Pennsylvania -- Pensacola,
8 Florida was shot as a result of providing
9 abortions back in 1993?
- 10 A. That's right.
- 11 Q. And I take it that as an abortion provider
12 you've become aware that Dr. Schlepian was
13 gunned down before his wife and children in his
14 family home in Buffalo, New York by people who
15 opposed -- by a person who opposed abortion and
16 he was an abortion provider?
- 17 A. Correct.
- 18 Q. And you knew that clinics across the United
19 States have been bombed by individuals opposed
20 to abortion?
- 21 A. Hundreds of them.
- 22 Q. By 1999 did you know that doctor clinic -- Dr.
23 Tiller's clinic had been bombed back in 1986?
- 24 A. Yes, I did.
- 25 Q. By 1999 did you know that in 1993 Dr. Tiller

1 himself had been the victim of an attempted
2 murder and himself shot multiple times?

3 A. Of course.

4 Q. By 1999 then you knew that because of the
5 personal and professional dangers involved, very
6 few doctors in the United States were any longer
7 willing to get involved in abortions at all; is
8 that right?

9 A. That's exactly right.

10 Q. And you knew that there were very few doctors in
11 the United States who would be willing to get
12 involved in an abortion by making a referral; is
13 that correct?

14 A. Yes.

15 Q. When the prosecutor -- taking you back to
16 December 8th of 2006, when you appeared for the
17 inquisition you were asked your address.
18 Correct?

19 A. Yes.

20 Q. And you declined to give your address at that
21 time. Correct?

22 A. I did.

23 Q. Would you explain to the ladies and gentlemen on
24 the jury why you did that.

25 A. For security reasons.

1 Q. And had you yourself been the subject of death
2 threats before that?

3 A. Yes, I have.

4 Q. And were you reluctant to even have the court
5 reporter take down your address at that time?

6 A. I refused multiple times.

7 Q. When you were consulting with patients at
8 Women's Health Care Services, I take it you were
9 able to observe the security that was there?

10 A. Yes.

11 Q. And at that location they had security cameras
12 all around the outside of Women's Health Care
13 Services?

14 A. That's right.

15 Q. And you could see when you entered the vestibule
16 at Women's Health Care Services that there were
17 television monitors inside whereby an armed
18 security guard could monitor the cameras and
19 what was going on outside?

20 A. Correct.

21 Q. And I take it that when you were at Women's
22 Health Care Services you were able to observe
23 that armed guards were constantly present?

24 A. Yes, they were.

25 Q. And were you able to observe that there was a

1 metal detector like the ones you pass through at
2 the airport in the vestibule of Women's Health
3 Care Services?

4 A. Yes.

5 Q. I'm not -- I don't want to ask you specifically
6 where you live or what your address is, but is
7 it fair to say that from 1999 to the present you
8 live in a rural area?

9 A. Yes.

10 Q. And you do not have security cameras on your
11 house, do you?

12 A. No.

13 Q. And you do not employ a private security force,
14 do you?

15 A. No.

16 Q. And you do not have at your home the kind of
17 security that was at Women's Health Care
18 Services?

19 A. No.

20 Q. The attorney general's office asked you
21 yesterday -- strike that. When you gave your
22 testimony at the inquisition were you asked
23 about what security you had at your rural
24 address?

25 A. I don't remember if I was asked about it. I

1. think it ---
- 2 Q. Did you talk about it?
- 3 A. Yes.
- 4 Q. Okay. And did you tell the attorney general's
5 office that was asking you questions then that
6 it was agreed in advance when you began to
7 consult with Women's Health Care Services that
8 Dr. Tiller would not give out the names of the
9 doctors who provided consultations for patients
10 to people who just called up?
- 11 A. Oh, yes.
- 12 Q. You remember yesterday the prosecutor asked you
13 some questions about how the patients at Women's
14 Health Care Services that you consulted with
15 could get ahold of you?
- 16 A. Yes.
- 17 Q. And can you just explain to the ladies and
18 gentlemen on the jury why it was agreed upon
19 that Dr. Tiller's office would not just
20 willy-nilly give out the telephone numbers or
21 addresses of doctors who consulted with patients
22 at Women's Health Care Services when somebody
23 called up.
- 24 A. Because all the anti-choice people call up all
25 the time with fake calls.

1 Q. And they might do what?

2 A. Get anybody's cell phone number and harass them.
3 And basically you can figure out where somebody
4 lives by their telephone number, at least what
5 county they're in.

6 Q. So was it -- around the time you began to
7 consult with patients at Women's Health Care
8 Services, was it recognized to be a security
9 concern that if somebody just called up and said
10 I need to get a list of the names and phone
11 numbers of doctors who will consult on an
12 abortion, was that recognized to be a security
13 risk?

14 A. Absolutely.

15 Q. Because the person calling and asking for the
16 name of a consulting doctor and phone number
17 might not really be a patient; is that right?

18 A. Of course. In fact, that's how the report --
19 the county reporting thing came about, because
20 we have to report by counties. If you're an
21 abortion provider and you do abortions, you have
22 to report from your own county that they're done
23 and doctors have been targeted based on that
24 that are in small areas. It's really easy to
25 see, oh, like there's only Joe Smith in this

- 1 area so then they go and picket Joe Smith.
- 2 Q. And I take it that the reason your name and
3 phone number wouldn't be given out is because if
4 the protesters came to the rural area where you
5 live, you don't have any of these security
6 provisions?
- 7 A. There's clear sniper shots across two sides of
8 the house, open pastures, nobody else around.
- 9 Q. And realistically is sniper fire something you
10 fear as an abortion provider in America in the
11 20th and 21st century?
- 12 A. Sadly to say, yes.
- 13 Q. In the beginning, in the 1999 time frame, you
14 would travel from Lawrence to Women's Health
15 Care Services a couple of times a month; is that
16 right?
- 17 A. Yes.
- 18 Q. But there was a period of time in the beginning
19 that you didn't come at all. Right?
- 20 A. That's right.
- 21 Q. And would you share with the ladies and
22 gentlemen on the jury why that was.
- 23 A. I don't remember the details. I just wasn't
24 called and wasn't needed.
- 25 Q. And was it your understanding that in the

1 beginning there were other consultants who
2 provided evaluations of patients at Women's
3 Health Care Services?

4 A. Yes.

5 Q. When you began consulting with patients at
6 Women's Health Care Services, it was your
7 understanding that you would probably be one of
8 several Kansas consultants that would consult
9 with the patients for purposes of determining if
10 an abortion was necessary under the statutory
11 definition?

12 A. Yes.

13 Q. And, in fact, your best recollection is that
14 when you started consulting with the patients at
15 Women's Health Care Services, you were
16 alternating with at least one other person for a
17 while; is that true?

18 A. Yes.

19 Q. You recognize the name of that alternating
20 person to be Dr. Ralph Murati, a Wichita
21 psychiatrist?

22 A. Yes.

23 Q. And did the name Dr. McCown ever come to your
24 attention?

25 A. No.

- 1 Q. And you knew, during the course of your
2 consulting with patients at Women's Health Care
3 Services, that at least one other consultant
4 quit because he was picketed at his office; is
5 that right?
- 6 A. Yes.
- 7 Q. And Mr. Disney asked you yesterday some
8 questions about when you used the term full-time
9 consultant. I'll come to that in a second, but
10 do you recall that around the time the other
11 consultants had declined to continue to provide
12 evaluations at Women's Health Care Services that
13 was at around the time that there was a bomb
14 threat at the clinic?
- 15 A. That's what I recall, yes.
- 16 Q. I'm sorry. I couldn't hear.
- 17 A. That's what I recall.
- 18 Q. And around that time -- let me just back up.
19 When you gave your testimony that you were asked
20 about yesterday, that was testimony that you
21 gave to the office of the attorney general under
22 Phill Kline; is that right?
- 23 A. That's correct.
- 24 Q. And at that time you were being interrogated by
25 an individual who was an assistant attorney

1 general under Phill Kline named Steve Maxwell;
2 is that right?

3 A. Correct.

4 Q. And when you talked with the assistant attorney
5 general for Phill Kline in December of 2006, you
6 told him that around the time you think you
7 became the only consultant a whole group of
8 federal people from the Alcohol, Tobacco and
9 Firearms were at the Women's Health Care
10 Services clinic. Correct?

11 A. Yes.

12 Q. And you told the assistant attorney general for
13 Phill Kline that it was your memory at that time
14 that the ATF, the Alcohol, Tobacco and Firearms,
15 came in in a big armored vehicle and they had
16 all these guys in flak jackets there for week or
17 two; is that right?

18 A. That's -- yes.

19 Q. And you told that assistant attorney general for
20 Phill Kline that I recall the clinic needing to
21 have, in your words, eight 300-pound muscle guys
22 with flak jackets from the ATF around; is that
23 right?

24 A. Yes.

25 Q. Usually when you went to Women's Health Care

- 1 Services you drove yourself into the Women's
2 Health Care Services parking lot; is that right?
- 3 A. Yes.
- 4 Q. Would you see protesters when you did that?
- 5 A. Yes.
- 6 Q. Where would they be?
- 7 A. In the driveway and on the sidewalks, all around
8 the building.
- 9 Q. And what would they do as you drove in?
- 10 A. Wave signs, try to stick pamphlets in the
11 windows, try to block the driveway, yell, you
12 know what they do.
- 13 Q. So would you sometimes get a ride or have
14 somebody pick you up?
- 15 A. Yes.
- 16 Q. And that would be under what circumstances?
- 17 A. Circumstances where there was a threat to me
18 getting in or when there were inordinate numbers
19 of protesters or some special occasion, you
20 know, some event that they're celebrating or
21 whatever.
- 22 Q. Or if there was a bomb threat?
- 23 A. Right. Right, obviously.
- 24 Q. Now, you were asked the questions yesterday
25 about being a full-time consultant and I think

1 you clarified that yesterday. Were you ever a
2 full-time consultant?

3 A. Well, by full-time that usually means every day,
4 in my opinion, and that was a poor choice of
5 words. So I wouldn't consider myself at all
6 full-time, no.

7 MR. MONNAT: May I approach, Your
8 Honor?

9 THE COURT: Yes.

10 BY MR. MONNAT:

11 Q. Let me ask you, please, if you would read some
12 of the same pages that you were talked about --
13 talked with yesterday about. Let me refer you
14 to page 55, line 25 through 57, line one. And
15 just read it silently to yourself and just tell
16 me when you've had a chance to do so.

17 A. Okay.

18 MR. MONNAT: May I approach again,
19 Your Honor?

20 THE COURT: Yes.

21 MR. MONNAT: Thanks. May I ask some
22 questions from here?

23 THE COURT: That's fine.

24 BY MR. MONNAT:

25 Q. Now, is it fair to say that the attorney general

1 under Phill Kline around the time you gave the
2 answer full-time consultant was actually talking
3 to you about the point at which you weren't
4 alternating as a consultant with any other
5 person who consulted at Women's Health Care
6 Services?
7 A. That's what I was referring to. That's what I
8 meant to refer to. I just used a poor choice of
9 words.
10 Q. Right. And what these --
11 A. I should have said only instead of full-time.
12 Q. And so what you were describing was the period
13 of time when the other consultants had quit; is
14 that right?
15 A. Correct.
16 Q. And around the time the ATF was there because of
17 a bomb scare. Correct?
18 A. Well, I -- that was actually two separate
19 events, but generally correct.
20 Q. All right. So what you were trying to tell them
21 was I remember I became the only consultant
22 around the time that the Alcohol, Tobacco and
23 Firearms people were there because of a bomb
24 scare? And don't let me put words in your
25 mouth.

- 1 A. Well --
- 2 Q. Clarify that if that's incorrect.
- 3 A. I think there were two separate events. There
- 4 was one week-long event where there was a
- 5 heightened threat and that's why the ATF was
- 6 there. Sometime around there that was a bomb
- 7 scare and that's when the bomb squad came and
- 8 the bomb dogs and all that. So thinking back it
- 9 was two separate events.
- 10 Q. All right. But the thing I want --
- 11 A. But that was the time period when I became the
- 12 only person coming.
- 13 Q. All right. And when you said I became the
- 14 2full-time consultant was with the bomb squad
- 15 thing, what you meant was I became the only
- 16 consultant around the time of the bomb scare
- 17 thing?
- 18 A. Right.
- 19 Q. That's what you meant at the time. Correct?
- 20 A. Exactly.
- 21 Q. So you weren't trying to say I was a full-time
- 22 consultant. You were just trying to say I was
- 23 the only one willing to come to Women's Health
- 24 Care Services and consult with the patients
- 25 after the other consultant who had been doing it

1 was scared off?

2 A. Correct.

3 THE COURT: Before you move into
4 another point, it's about time for our
5 mid-morning break. Did you finish with that
6 point?

7 MR. MONNAT: Yes.

8 THE COURT: I don't want to interrupt
9 your train of thought.

10 MR. MONNAT: That's fine.

11 THE COURT: All right. Let's go ahead
12 and take our mid-morning break for about 15
13 minutes.

14 (Thereupon, the morning recess was
15 taken.)

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1 STATE OF KANSAS)
2) ss:
3 COUNTY OF SEDGWICK)

4 C E R T I F I C A T E

5 I, Sharon M. Williams, a Certified Shorthand
6 Reporter, under and by virtue of the laws of the
7 State of Kansas, and a regularly appointed,
8 qualified and acting official reporter of the
9 Eighteenth Judicial District of the State of Kansas,
10 do hereby certify that as such official reporter, I
11 was present at and reported in machine shorthand the
12 above and foregoing proceedings in Case No.
13 07 CR 2112, heard on March 24, 2009.

14 That thereafter, upon the oral request of Lee
15 Thompson, attorney for the Defendant, I personally
16 prepared the foregoing transcript, by means of
17 computer-aided transcription, and that said
18 transcript is a true and correct copy of my
19 shorthand notes, all to the best of my knowledge and
20 ability.

21 SIGNED, OFFICIALLY SEALED, and DELIVERED this
22 24th day of March, 2009.

23 _____
24 Sharon M. Williams, CSR, RPR
25 CSR # 1413

SHARON WILLIAMS, CSR, RPR

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

THE STATE OF KANSAS,

Plaintiff,

VS.

GEORGE R. TILLER,

Defendant.)

Case No. 07 CR 2112
Volume 2B

J U R Y T R I A L

PROCEEDINGS had before the Honorable Clark V. Owens,
II, Judge of Division 20, Eighteenth Judicial District,
Sedgwick County, Kansas, on the 24th day of March, 2009.

A P P E A R A N C E S

PLAINTIFF:

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DEFENDANT:

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and

STATE vs. TILLER, 07 CR 2112 - 03-24-09, Volume 2B

A P P E A R A N C E S (Continued)

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Ms. Erin C. Thompson
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Wichita, Kansas - 67202

STATE vs. TILLER, 07 CR 2112 - 03-24-09, Volume 2B

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CERTIFICATE OF REPORTER

55

STATE vs. TILLER, 07 CR 2112 - 03-24-09, Volume 2B

P R O C E E D I N G S

(The jury absent the courtroom, the following proceedings were had.)

THE COURT: You may bring in the jury.

(The jury returned to the courtroom, after which the following proceedings were had.)

THE COURT: You may continue.

MR. MONNAT: Thank you, Your Honor.

May it please the Court, ladies and gentlemen of the jury.

CONTINUED CROSS-EXAMINATION

MR. MONNAT:

Q. Yesterday in response to some questions of the prosecutor you looked at some transcripts and you mentioned that you were defensive and that might have affected some of your answers in December of 2006. Do you remember that?

A. Yes, I do.

Q. Just to kind of set the stage, in December of 2006, was that about the last month that attorney Phill Kline -- Attorney General Phill Kline was in office?

A. Yes, it was.

Q. And you were subpoenaed to this inquisition, correct?

A. Yes.

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09:59 1 Q. And at the beginning of that inquisition it was
11:00:02 2 announced to you that also in the room were Special
11:00:06 3 Agent Jarrett Reed of the Attorney General's Office,
11:00:10 4 correct?
11:00:11 5 A. Yes.
11:00:11 6 Q. And Special Agent in Charge Tom Williams of the Kansas
11:00:17 7 Attorney General; is that correct?
11:00:19 8 A. That's right.
11:00:19 9 Q. And my name is Steven Maxwell, I'm a senior assistant
11:00:23 10 attorney general assigned to the criminal division,
11:00:26 11 correct?
11:00:26 12 A. Correct.
00:28 13 Q. And you were questioned then by Mr. Maxwell. Did you
11:00:33 14 regard him as Phill Kline's number one man?
11:00:36 15 A. Absolutely.
11:00:37 16 Q. And just share with the ladies and gentlemen of the
11:00:40 17 jury what it felt like being interrogated under those
11:00:43 18 circumstances.
11:00:44 19 A. The inquisition minus the torture chamber. You know,
11:00:49 20 the Spanish Inquisition. That's what I felt like.
11:00:53 21 Q. Did you feel like you were under a lot of pressure?
11:00:57 22 A. Yes.
11:00:58 23 Q. Doctor, let me ask you, in the course of your training
11:01:04 24 and experience, are you familiar with one doctor
01:10 25 consulting with another doctor on a case?

STATE vs. TILLER, 07 CR 2112 - 03-24-09, Volume 2B

01:13 1 A. Yes.

11:01:14 2 Q. How regular a situation is that?

11:01:19 3 A. It's fairly regular.

11:01:21 4 Q. And just describe to the ladies and gentlemen of the

11:01:23 5 jury what that involves.

11:01:25 6 A. Well, normally it would involve a primary care

11:01:28 7 provider, you know, your regular family doctor having

11:01:32 8 a patient with the condition that was outside of their

11:01:35 9 normal scope of practice. And they would refer the

11:01:38 10 patient to a consultant who's a specialist in that

11:01:43 11 particular condition that they -- that the primary

11:01:48 12 care provider felt is a good specialist they would

01:54 13 refer you.

11:01:54 14 Q. Let's see if we can kind of give the ladies and

11:01:58 15 gentlemen of the jury an example, doctor.

11:01:59 16 For a while did you run kind of a country

11:02:03 17 clinic -- that may not be the name you used, but it

11:02:07 18 was in Westmoreland, Kansas, right?

11:02:09 19 A. I didn't run it. I was a co-practitioner there.

11:02:13 20 Q. And what was that?

11:02:13 21 A. It's a general family practice clinic in a rural area.

11:02:18 22 We had an outpatient clinic, a hospital, and like a

11:02:22 23 small six- or eight-bed hospital and an emergency room

11:02:25 24 and two physicians. Myself and the owner of the

02:29 25 practice alternated covering the emergency room and

STATE vs. TILLER, 07 CR 2112 - 03-24-09, Volume 2B

02:32 1 the hospital patients, as well as working in the
11:02:35 2 outpatient clinic there and in a nearby town,
11:02:40 3 Frankfurt, Kansas.

11:02:40 4 Q. And I apologize, doctor, but you might just lean up a
11:02:44 5 little closer to that microphone.

11:02:49 6 Can you share with the ladies and gentlemen
11:02:51 7 of the jury whether there was ever any circumstance
11:02:53 8 during the operation of that rural clinic when
11:02:57 9 consultants came in and how that worked.

11:02:59 10 A. Well, we regularly had a cardiology group who would
11:03:05 11 bring a consultant down and we also had an orthopedist
11:03:09 12 who would come. We had a general surgeon and an
03:11 13 OB/GYN physician who would regularly see our patients
11:03:15 14 in the outpatient clinic as well as in the hospital,
11:03:19 15 if necessary.

11:03:19 16 Q. And would those consultants all come in because maybe
11:03:24 17 they had greater expertise in areas of medicine than
11:03:28 18 you and the operator of the clinic had?

11:03:32 19 A. Correct. And it saved the patients from driving to
11:03:35 20 Topeka which was quite a ways away, about an hour
11:03:39 21 drive.

11:03:40 22 Q. Now, when those consultants would come in, where would
11:03:44 23 they see the patients at?

11:03:45 24 A. In the exam rooms of the clinic, the outpatient
03:49 25 clinic.

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- 03:50 1 Q. In the exam rooms of the outpatient clinic that you
11:03:53 2 and the owner/operator of the clinic regularly
11:03:56 3 occupied?
- 11:03:56 4 A. Yes.
- 11:03:57 5 Q. And when these cardiologists and OB/GYN doctors and
11:04:04 6 orthopedists would come in, would they then pay some
11:04:06 7 rent to the clinic that you and the owner/operator of
11:04:08 8 the clinic regularly occupied?
- 11:04:10 9 A. No.
- 11:04:10 10 Q. And why is that?
- 11:04:13 11 A. Because it was for the convenience of the patient.
- 11:04:17 12 Q. And when the consultants would come in, who would pay
04:24 13 them?
- 11:04:25 14 A. The patients would pay the consultants.
- 11:04:27 15 Q. The patients would either pay them directly or by
11:04:31 16 their own medical insurance?
- 11:04:32 17 A. Exactly.
- 11:04:32 18 Q. And is that kind of consultation between a primary
11:04:40 19 care doctor and other consultants something that goes
11:04:44 20 on in America every single day?
- 11:04:46 21 A. Absolutely.
- 11:04:55 22 Q. You continued with the operation of your own women's
11:04:58 23 clinic in Lawrence, Kansas, now for five years; is
11:05:01 24 that right?
- 05:01 25 A. Yes.

STATE vs. TILLER, 07 CR 2112 - 03-24-09, Volume 2B

05:01 1 Q. And you closed that office in Lawrence in September
11:05:08 2 of 2002; is that right?
11:05:08 3 A. That's right.
11:05:09 4 Q. So between September of 1999 when you started
11:05:16 5 consulting with patients at Women's Health Care
11:05:19 6 Services to September of 2002, you always had that
11:05:24 7 clinic up in Lawrence while you were consulting with
11:05:27 8 patients at Women's Health Care Services?
11:05:29 9 A. That's right.
11:05:30 10 Q. And while you were running the clinic in Lawrence and
11:05:35 11 consulting with patients at Women's Health Care
11:05:37 12 Services, were you paying rent on the clinic up in
05:40 13 Lawrence, Kansas?
11:05:41 14 A. Yes.
11:05:41 15 Q. Now, you -- did you shut down your women's clinic in
11:05:47 16 Lawrence because you were making so much money doing
11:05:50 17 consultations with women patients at Women's Health
11:05:53 18 Care Services?
11:05:54 19 A. No.
11:05:54 20 Q. Has money ever been the primary motivating factor in
11:05:59 21 your practice of medicine?
11:06:01 22 A. No.
11:06:01 23 Q. Can you tell the ladies and gentlemen of the jury why
11:06:06 24 you closed your women's clinic in Lawrence, Kansas, in
06:11 25 September of 2002, please.

STATE vs. TILLER, 07 CR 2112 - 03-24-09, Volume 2B

06:13 1 A. Because August 31st, 2002, my child became very ill
11:06:19 2 and had to be hospitalized and he was diagnosed with
11:06:21 3 Type 1 diabetes.
11:06:23 4 Q. And I don't mean to pry into a sensitive subject, but
11:06:29 5 what all did that involve in terms of requiring you to
11:06:33 6 do?
11:06:33 7 A. Well, first of all, it was a horrendous crisis for me.
11:06:39 8 As a physician, I understood the implications of that
11:06:43 9 more than even patients that I had taken care of
11:06:46 10 would. And I was totally devastated. I no longer
11:06:53 11 really could focus on anything but that problem for
11:06:59 12 months and months. And it required an immense amount
07:04 13 of time to make sure that he was okay from hour to
11:07:11 14 hour.
11:07:14 15 Maybe I reacted, you know, more extremely,
11:07:16 16 but I think it was partly because of my own medical
11:07:19 17 knowledge. I wouldn't trust anyone else to take care
11:07:21 18 of him, not even my husband. I still feel like he's
11:07:25 19 not, you know, as in depth as I am, whatever.
11:07:30 20 But anyway, it was an unanticipated crisis.
11:07:35 21 And I also hadn't anticipated my own reaction to the
11:07:40 22 crisis. I had plenty of patients over the years with
11:07:43 23 diabetes, even pediatric diabetics, but it's really
11:07:47 24 different when it's you and not something that you're
07:50 25 only dealing with for 15 minutes or 30 minutes. So it

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11:07:55 1 was a humbling experience.

11:07:56 2 Q. And did that cause some personal reflection and change

11:08:00 3 in you?

11:08:01 4 A. Yes, it did.

11:08:02 5 Q. And share that with the ladies and gentlemen of the

11:08:04 6 jury.

11:08:04 7 A. Well, for one thing, it -- even though I understood on

11:08:09 8 an intellectual level what the patients that I had

11:08:13 9 consulted with over the years in all the different

11:08:15 10 practices had dealt with, it certainly is a very

11:08:19 11 educational process for physicians who tend to have a

11:08:23 12 level of denial because it's necessary in order to

11:08:26 13 function. If you go around, you know, feeling the

11:08:30 14 pain of everyone on every moment that you are

11:08:33 15 interacting, it becomes very difficult to function.

11:08:36 16 So we develop kind of a professional distance. And

11:08:41 17 when you experience that illness yourself, obviously

11:08:44 18 you have a very different and a very educational

11:08:48 19 experience. It takes you out of that sort of

11:08:51 20 professional mindset that allows you to remain

11:08:58 21 objective.

11:09:00 22 Q. And so what did you decide to do in order -- and was

11:09:04 23 this your only child?

11:09:05 24 A. Yes.

11:09:05 25 Q. What did you decide to do to take care of your only

STATE vs. TILLER, 07 CR 2112 - 03-24-09, Volume 2B

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child?

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A. Well, I decided that I needed to limit my practice to the absolute minimum for a period of time while myself adjusted and was able to adjust the dynamics of the family to -- to meet the best interests of my child.

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Q. And what were some of the needs of your child that needed to be met just in terms of medical attention?

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A. Well, for one thing he just started kindergarten, he was two weeks into kindergarten class and nobody -- there's no school nurse except for two days a week and she's only there for half a day. So there wasn't anybody that was clinically capable of taking care of his blood sugar checks and giving his insulin. It's a tiny rural school. It's not, you know, an urban school where they have a full-time nurse.

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The most familiarity that anybody had with diabetes was his teacher's husband was diabetic. But of course he's an adult and he manages it himself. So she was slightly able to recognize if he was hypoglycemic just by the way he acted. But there wasn't really anybody there who could care for him, you know, on an urgent basis.

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So I felt that it was necessary for me to be available and able to go to the school. And basically I trusted my husband to do it one day a week. And

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10:28 1 felt that that was an acceptable risk. But anything
11:10:31 2 beyond that wasn't in the best interest of my child.
11:10:35 3 Q. And the risks that your child faced at the time were
11:10:40 4 coma and seizure unless his insulin needs were
11:10:46 5 appropriately met?
11:10:46 6 A. That's right.
11:10:47 7 Q. And you say that you were going to let your husband
11:10:50 8 take care of your son, meet his needs one day a week,
11:10:54 9 what did you do on that one day a week?
11:10:56 10 A. That was the day that I travelled to Wichita.
11:10:59 11 Q. And when you -- so you would continue coming to
11:11:03 12 consult with the patients at Women's Health Care
11:06 13 Services?
11:11:06 14 A. That's right.
11:11:07 15 Q. And was there a reason that you decided to continue
11:11:11 16 consulting with patients at Women's Health Care
11:11:14 17 services that wasn't purely monetary?
11:11:17 18 A. Well, because I knew that it was very difficult to
11:11:21 19 find consultants, for one thing.
11:11:23 20 Q. And have you already shared with us the reasons why it
11:11:26 21 was hard to find consultants?
11:11:28 22 A. Because of the -- the threat of physical threat, the
11:11:33 23 professional threat, the legal threat, especially at
11:11:36 24 that time with Phill Kline being the attorney general.
11:42 25 I -- yeah, in 2003. So, you know, a huge issue, I

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12:00 1 think, didn't -- Phill Kline actually drafted that
11:12:02 2 legislation, I believe.

11:12:04 3 Q. Let me ask you, did Dr. Tiller ever directly or
11:12:08 4 indirectly control the work you did with the patients
11:12:12 5 you saw at Women's Health Care Services?

11:12:15 6 A. No.

11:12:16 7 Q. Did he ever tell you what to do?

11:12:19 8 A. No. In fact, he always told me do exactly what you
11:12:23 9 think is right. It doesn't matter what I think about
11:12:25 10 anything at all.

11:12:26 11 Q. Did he ever tell you what findings you should make?

11:12:30 12 A. No, absolutely not.

11:12:32 13 Q. Do you -- what kind of judgment do you feel like you
11:12:37 14 were able to exercise with the individual patients you
11:12:41 15 saw at Women's Health Care Services?

11:12:43 16 A. It was totally my own judgment. I was never under any
11:12:47 17 kind of coercion whatsoever.

11:12:49 18 Q. Do you feel like it was your own independent judgment
11:12:53 19 that you were --

11:12:54 20 A. Yes, I do.

11:12:54 21 Q. -- able to exercise?

11:12:55 22 A. Yes.

11:12:57 23 Q. Were there ever occasions when you saw a patient at
11:13:00 24 Women's Health Care Services and said to yourself, no,
13:04 25 this patient isn't eligible for an abortion?

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13:07 1 A. Yes, I did.

11:13:08 2 Q. And how would that determination be treated by the

11:13:13 3 staff and Dr. Tiller?

11:13:14 4 A. They said it's your judgment. If that's what you say,

11:13:18 5 that's fine. We -- they always accepted that.

11:13:22 6 Q. So when you would say to Dr. Tiller, I don't think

11:13:25 7 this patient is eligible, I'm not going to refer the

11:13:28 8 patient to you, would Dr. Tiller go out and get

11:13:33 9 another opinion from another referring physician?

11:13:35 10 A. Now that I don't know. But the big problem was with

11:13:38 11 the patient usually. I would have to explain to the

11:13:41 12 patient that I didn't feel it was indicated. And they

13:44 13 would put up some resistance. And then I would say,

11:13:48 14 well, look, you know, you can call anybody -- you

11:13:51 15 know, any Kansas physician here. And if they

11:13:53 16 requested I would make some indications, but --

11:13:56 17 Q. Are you aware of any abortion Dr. Tiller performed

11:14:02 18 after you declined to refer a patient to him?

11:14:04 19 A. No, I'm not.

11:14:06 20 Q. When you --

11:14:12 21 A. I wouldn't be aware. I wouldn't have any way of

11:14:15 22 knowing that. But, no, I'm not, sorry.

11:14:18 23 Q. When you were examined by the senior assistant

11:14:24 24 attorney general for Phill Kline, you told that

14:27 25 attorney that you declined sometimes to refer patients

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14:32 1 to Dr. Tiller who you evaluated, correct?

11:14:35 2 A. Yes.

11:14:35 3 Q. And you told that attorney that sometimes you did that

11:14:40 4 because the statements from the women weren't strong

11:14:43 5 enough or convincing enough from a medical standpoint,

11:14:46 6 correct?

11:14:46 7 A. Correct.

11:14:46 8 Q. You told that attorney that sometimes the women's

11:14:51 9 mental status precluded them from making a decision

11:14:54 10 for various reasons, correct?

11:14:55 11 A. Correct.

11:14:56 12 Q. You told that attorney sometimes the women were too

14:59 13 chemically impaired to make an informed decision on

11:15:02 14 anything at that moment and so you would not refer

11:15:05 15 them to Dr. Tiller for an abortion, correct?

11:15:07 16 A. That's correct.

11:15:08 17 Q. Sometimes you told -- strike that.

11:15:12 18 You told that attorney sometimes the women's

11:15:14 19 cognitive processes were too impaired to make a

11:15:17 20 decision and they didn't have a guardian with them,

11:15:20 21 correct?

11:15:20 22 A. Correct.

11:15:20 23 Q. And in those circumstances you would decline to refer

11:15:23 24 the patient to Dr. Tiller, correct?

15:25 25 A. Correct.

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15:27 1 Q. And while you were telling the attorney general under
11:15:35 2 Phill Kline about -- the assistant attorney general
11:15:38 3 under Phill Kline about that, you even told that
11:15:42 4 assistant attorney general about a patient who had
11:15:46 5 recently flown clear from England, correct?
11:15:48 6 A. Yes.
11:15:48 7 Q. What did you tell the attorney general about that
11:15:51 8 patient?
11:15:51 9 A. That I didn't feel that it was indicated.
11:15:54 10 Q. So even though the patient had come all the way here
11:15:58 11 from England, you interviewed the patient and did not
11:16:01 12 think the patient eligible for an abortion?
16:04 13 A. Yes.
11:16:05 14 Q. And you told the patient that?
11:16:06 15 A. Yes.
11:16:07 16 Q. And you declined to refer the patient to Dr. Tiller,
11:16:10 17 correct?
11:16:10 18 A. That's right.
11:16:11 19 Q. The prosecutor asked you if you paid rent to
11:16:19 20 Dr. Tiller for the temporary use of an ever-changing
11:16:25 21 place in his clinic to interview patients. And you
11:16:28 22 never did, correct?
11:16:28 23 A. That's correct.
11:16:30 24 Q. From -- and you were, in fact, paying rent in
16:34 25 Lawrence, I think you already said, correct?

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- 16:36 1 A. Correct.
- 11:16:36 2 Q. And when you would see patients at Women's Health Care
- 11:16:40 3 services, you would have to pay a number of your own
- 11:16:44 4 expenses, correct?
- 11:16:45 5 A. That's right.
- 11:16:46 6 Q. For instance, when you would travel the five-hour
- 11:16:51 7 roundtrip from the Lawrence, Kansas, area, who would
- 11:16:57 8 pay for the gas?
- 11:16:58 9 A. I would pay for the gas.
- 11:17:00 10 Q. Did you have to pay Kansas Turnpike tolls?
- 11:17:02 11 A. Yes, sir.
- 11:17:03 12 Q. Did you pay for those yourself?
- 17:04 13 A. Yes.
- 11:17:05 14 Q. And the other expenses, did you have other expenses
- 11:17:13 15 for the maintenance of your separate medical practice
- 11:17:19 16 even after September of 2002 when you closed down the
- 11:17:22 17 women's clinic?
- 11:17:23 18 A. My malpractice insurance, my license from the state of
- 11:17:29 19 Kansas.
- 11:17:32 20 Q. So medical malpractice insurance. Did you have some
- 11:17:37 21 office equipment and computer expenses?
- 11:17:39 22 A. Oh, yes, yes, office -- I have a small office in my
- 11:17:43 23 house.
- 11:17:43 24 Q. And did you have copying expenses and mailbox
- 17:46 25 expenses?

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- 17:47 1 A. Yes, yes.
- 11:17:48 2 Q. The mailbox expense, could you just explain that to
- 11:17:53 3 the ladies and gentlemen of the jury.
- 11:17:54 4 A. Well, when I closed my clinic I knew that I would have
- 11:17:57 5 a lot of pending financial ARs, or what- -- you know,
- 11:18:02 6 whatever you call that. Bills coming in, insurance
- 11:18:05 7 checks, whatever. So I kept my P.O. box open. And
- 11:18:12 8 all the mail from the building, which actually was
- 11:18:15 9 already coming to the P.O. box anyway just so we
- 11:18:17 10 wouldn't have to deal with it at the building because
- 11:18:20 11 it was -- as I recall, it was dropped into a slot in
- 11:18:23 12 the main hallway which didn't work very well because
- 11:18:26 13 the building shared an egress into the building. But
- 11:18:31 14 anyway, so I picked up all the mail at the P.O. box
- 11:18:36 15 anyhow. And I kept that for a number of years just
- 11:18:39 16 until, you know, it wasn't necessary anymore.
- 11:18:42 17 Q. And was the P.O. box through a particular business
- 11:18:45 18 entity?
- 11:18:46 19 A. Yes. That was my -- well, we changed it to Clinton
- 11:18:52 20 Women's Clinic in honor of Dr. Clinton when he passed
- 11:18:56 21 away.
- 11:18:56 22 Q. But I was going to ask you about some expense you had
- 11:18:59 23 with the United Parcel Service and Mail Boxes Etc.
- 11:19:03 24 A. Oh, right.
- 11:19:04 25 Q. What was that expense?

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19:05 1 A. Well, I had a Mail Box Etc. box for many years, since
11:19:11 2 the 1990s, because of needing to have a place to get
11:19:16 3 mail that was safe. And I didn't want to have my home
11:19:19 4 address listed anywhere. And in the old days, back
11:19:23 5 then, you could get a person's -- if you had a -- like
11:19:27 6 a post office box, for a dollar you could go and find
11:19:30 7 out who owned the post office box and what their home
11:19:34 8 address was. Now, that's not true anymore. But at
11:19:37 9 that time it was. So I paid to have a private
11:19:40 10 mailbox. And that was my personal address for a
11:19:43 11 number of years, like 15 years. 10 or 15 years. Just
11:19:47 12 for security reasons.

19:49 13 Q. And again, what required you to have that heightened
11:19:53 14 security?

11:19:53 15 A. Because of the fact that I was an abortion provider.

11:19:57 16 Q. Let me just back up for a second. When you would see
11:20:07 17 a patient and determine that the patient was
11:20:11 18 ineligible for an abortion, would you still get paid?

11:20:14 19 A. Yes. I often wouldn't know if they were ineligible
11:20:23 20 until the end of the consultation.

11:20:24 21 Q. And so you would have them pay you usually at the
11:20:26 22 beginning of the consultation?

11:20:27 23 A. Well, it varied. I tried to make that flexible. So
11:20:32 24 it wasn't always at any particular set time in the
20:35 25 interview. But it was usually at the beginning.

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10:40 1 Q. The issue of whether you should pay rent to Dr. Tiller
11:20:51 2 when you saw patients at Women's Health Care Center --
11:20:57 3 services, excuse me, was that discussed by you and
11:20:59 4 Dr. Tiller at some point?
11:21:00 5 A. I'm sorry, the issue of what? I'm sorry.
11:21:03 6 Q. Of whether you should pay rent.
11:21:04 7 A. Oh, yes, we did discuss that, as I recall.
11:21:06 8 Q. And I guess the question was, first of all, in order
11:21:09 9 to make it clear that you weren't legally or
11:21:11 10 financially affiliated, should you see the patients in
11:21:15 11 Wichita or drive them up to Lawrence, did you have
11:21:17 12 that discussion?
11:17 13 A. Yes, we did.
11:21:18 14 Q. And share with the ladies and gentlemen of the jury
11:21:21 15 what the nature of that discussion was and what the
11:21:24 16 outcome was.
11:21:25 17 MR. DISNEY: Your Honor, object to any
11:21:26 18 hearsay statement by the defendant.
11:21:28 19 THE COURT: I'll sustain.
11:21:30 20 MR. MONNAT:
11:21:32 21 Q. You talked -- what conclusion did you come to about
11:21:36 22 whether you should see the patients in Lawrence or
11:21:39 23 Wichita?
11:21:39 24 A. I discussed it with Dr. Tiller and we decided that --
21:46 25 that that was important to clarify. So as -- my

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11:50 1 understanding was he discussed it with the Board of
11:21:53 2 Healing Arts --
11:21:53 3 MR. DISNEY: Your Honor, it's -- well, I
11:21:54 4 would ask, first of all, that the witness be
11:21:56 5 instructed to stop talking when I'm making an
11:21:58 6 objection. Secondly, it calls for hearsay.
11:22:00 7 THE COURT: I'll sustain as hearsay anything
11:22:02 8 that she talked to Dr. Tiller about.
11:22:02 9 MR. MONNAT:
11:22:05 10 Q. Okay. I don't want to ask you what you talked to
11:22:08 11 Dr. Tiller about. Just can you tell the ladies and
11:22:11 12 gentlemen of the jury why you would see patients in
22:13 13 Wichita rather than up in Lawrence?
11:22:17 14 A. For convenience and security.
11:22:20 15 Q. Thank you, doctor.
11:22:24 16 And did you ever think that it was necessary
11:22:38 17 to pay Dr. Tiller rent for seeing and consulting with
11:22:44 18 patients at Women's Health Care Services?
11:22:46 19 A. I considered that it might be --
11:22:51 20 Q. And what --
11:22:53 21 A. -- necessary.
11:22:53 22 Q. -- conclusion did you come to?
11:22:56 23 A. That it was not.
11:22:57 24 Q. And why did you conclude it was not?
22:58 25 A. Because it was for the convenience and security of the

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23:01 1 patient.

11:23:01 2 Q. And would not paying rent be consistent with the

11:23:05 3 consultant model that you had known throughout your

11:23:08 4 medical career?

11:23:09 5 A. Yes.

11:23:10 6 Q. And would not paying rent be consistent with the kinds

11:23:15 7 of consultations you had done in Westmoreland,

11:23:20 8 Kansas -- or other physicians had done in

11:23:22 9 Westmoreland, Kansas, at the rural clinic?

11:23:24 10 A. Yes.

11:23:25 11 Q. And Mr. Disney asked this yesterday in your direct

11:23:42 12 examination. I take it that you never paid any rent

23:50 13 to Dr. Tiller for the furniture that you sat on when

11:23:57 14 you did the consultations with the patients or the

11:24:01 15 patient sat on; is that right?

11:24:02 16 A. That's correct.

11:24:03 17 Q. And had -- what kind of furniture was involved in

11:24:07 18 doing the consultation?

11:24:08 19 A. Like a chair and table, couch.

11:24:13 20 Q. And again, you didn't always use the same furniture

11:24:16 21 because you changed rooms from time to time?

11:24:19 22 A. Yes.

11:24:19 23 Q. And when the cardiologist and the OB/GYN and

11:24:26 24 orthopedists came to your rural clinic to do

24:28 25 consultations with patients consistent with their

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11:24:32 1 expertise, did they ever need to pay any rent for the
11:24:35 2 furniture or the table that -- the examination table
11:24:38 3 the patient sat on?
11:24:39 4 A. No.
11:24:40 5 Q. Did you ever even have a key to Women's Health Care
11:24:49 6 Services?
11:24:49 7 A. No.
11:24:49 8 Q. Were you an employee at Dr. Tiller's?
11:24:57 9 A. No.
11:24:58 10 Q. Were you ever an employee of Women's Health Care
11:25:01 11 Services?
11:25:01 12 A. No.
11:25:02 13 Q. Were you ever a partner with Dr. Tiller --
11:25:07 14 A. No.
11:25:07 15 Q. -- in business?
11:25:08 16 A. Oh, sorry. No.
11:25:09 17 Q. Were you ever in any kind of partnership with
11:25:14 18 Dr. Tiller or Women's Health Care Services?
11:25:16 19 A. No, I was not.
11:25:17 20 Q. Were you ever in any kind of joint venture with
11:25:21 21 Dr. Tiller or Women's Health Care Services?
11:25:23 22 A. No.
11:25:24 23 Q. Did you ever hold stock or any kind of financial
11:25:29 24 interest in Women's Health Care Services?
11:25:31 25 A. No.

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- 11:25:32 1 Q. Did you ever hold stock or financial interest in
11:25:37 2 anything with Dr. Tiller?
11:25:38 3 A. No.
11:25:39 4 Q. Did you have any kind of contract with Dr. Tiller?
11:25:43 5 A. No.
11:25:44 6 Q. If between September of 1999 and September of 2002 you
11:25:52 7 wanted to stop traveling down to Wichita and
11:25:56 8 consulting with patients, could you have?
11:25:58 9 A. Yes.
11:25:59 10 Q. Was there any legal obligation that prevented you from
11:26:03 11 stopping any time?
11:26:03 12 A. No.
11:26:04 13 Q. Did you have any kind of oral contract with
11:26:10 14 Dr. Tiller?
11:26:10 15 A. No.
11:26:11 16 Q. or implied contract?
11:26:13 17 A. No.
11:26:14 18 Q. And was Dr. Tiller free at any time to stop asking you
11:26:26 19 to come to Women's Health Care Services to see
11:26:29 20 patients?
11:26:30 21 A. Yes.
11:26:30 22 Q. Was he under any legal obligation to continue to have
11:26:34 23 you come to Women's Health Care Services once a week
11:26:38 24 to consult with patients?
11:26:40 25 A. No.

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- 26:40 1 Q. Did you ever receive a W-2 from Dr. Tiller or his CPA
11:26:50 2 or accounting firm?
- 11:26:51 3 A. No.
- 11:26:51 4 Q. Did you ever receive a 1099 from Dr. Tiller or his --
11:26:58 5 and by that I mean IRS Form 1099 -- from Dr. Tiller or
11:27:02 6 his accountant or CPA?
- 11:27:04 7 A. No.
- 11:27:04 8 Q. And is that because, amongst other things, you never
11:27:07 9 received any money from Dr. Tiller?
- 11:27:09 10 A. Yes, that's correct.
- 11:27:11 11 Q. Did you, other than what you've already told us about,
11:27:16 12 did Dr. Tiller furnish you with any kind of equipment
11:27:21 13 or tools or anything to do the evaluations?
- 11:27:24 14 A. No.
- 11:27:25 15 Q. Of course, the chairs were there that you sat on and
11:27:28 16 the patient sat on?
- 11:27:31 17 A. Correct.
- 11:27:31 18 Q. And the table?
- 11:27:32 19 A. Yes.
- 11:27:33 20 Q. Did you have any kind of shared equipment purchases or
11:27:37 21 leases with Dr. Tiller?
- 11:27:38 22 A. No.
- 11:27:39 23 Q. Did Dr. Tiller pay you any kind of salary?
- 11:27:47 24 A. No.
- 11:27:47 25 Q. Any kind of bonus?

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11:27:49 1 A. No.

11:27:50 2 Q. Any kind of profit?

11:27:51 3 A. No.

11:27:52 4 Q. Any kind of profit sharing or pension plan?

11:27:54 5 A. No.

11:27:55 6 Q. Any kind of stock payment?

11:28:00 7 A. No.

11:28:00 8 Q. Any kind of investment payment?

11:28:02 9 A. No.

11:28:02 10 Q. Mr. Disney asked you yesterday if you had met with

11:28:10 11 some of Dr. Tiller's current attorneys. Do you

11:28:15 12 remember that?

11:28:15 13 A. Yes.

11:28:16 14 Q. And you also met with Mr. Disney before yesterday,

11:28:22 15 didn't you?

11:28:22 16 A. Yes.

11:28:23 17 Q. And you also met with special agents of the Kansas

11:28:27 18 Attorney General's Office who are present on at least

11:28:30 19 two occasions before yesterday when -- who are present

11:28:35 20 with Mr. Disney when you met with him on two occasions

11:28:39 21 before yesterday, correct?

11:28:39 22 A. Yes.

11:28:40 23 Q. Yesterday -- did some of the questioning between

11:28:52 24 Mr. Disney and yourself yesterday have some of the

11:28:54 25 same feelings to you as did the questioning with

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28:57 1 Mr. Maxwell?

11:28:59 2 A. Well, nowhere near the intensity, but some of them,

11:29:05 3 yes.

11:29:05 4 Q. Yesterday Mr. Disney asked you several questions in

11:29:09 5 which in the words of his questions he said that you

11:29:13 6 were a consultant for Dr. Tiller; is that accurate?

11:29:17 7 A. Well, I just hate to discuss semantics. I mean I'm

11:29:27 8 afraid that it's going to imply things. So -- I

11:29:32 9 mean -- what -- can you word that differently or --

11:29:34 10 Q. When you would meet with a patient, who was your first

11:29:37 11 duty to?

11:29:38 12 A. Oh, oh, I see. To the patient.

29:41 13 Q. All right. So were you a consultant for Dr. Tiller or

11:29:44 14 were you a consultant for the patient?

11:29:47 15 A. I was acting as a consultant at the behest of

11:29:51 16 Dr. Tiller on the part of the patients.

11:29:54 17 Q. Thank you.

11:29:55 18 And that's consistent with the consultation

11:29:58 19 model that you have known throughout your medical

11:30:00 20 career and you shared with the jury, the Westmoreland

11:30:05 21 rural clinic story about?

11:30:06 22 A. Yes, that's correct.

11:30:07 23 Q. And as a medical doctor, do you take an oath?

11:30:11 24 A. Yes, we do.

30:12 25 Q. And does your oath and your ethics require you to

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11:30:18 1 always consider the patient's health first regardless
11:30:22 2 of anybody else?
11:30:24 3 A. Yes, it does.
11:30:25 4 Q. You said yesterday that you were pro choice in
11:30:36 5 response to one of the questions. Did your political
11:30:40 6 views on reproductive rights ever cause you to abandon
11:30:45 7 or compromise the exercise of your independent
11:30:49 8 judgment about the health and well-being of a patient?
11:30:52 9 A. No. Part of my judgment includes assessing their own
11:31:01 10 beliefs and feelings. That's a very important part of
11:31:05 11 the process.
11:31:06 12 Q. Thank you, doctor.
11:31:08 13 Yesterday the prosecutor suggested in
11:31:13 14 questioning to you that after September of 2002 you
11:31:22 15 had no other job other than to consult with patients
11:31:28 16 at Women's Health Care Services. Do you feel like
11:31:32 17 that's accurate?
11:31:33 18 A. Well, I have always considered myself self-employed.
11:31:37 19 I do what I want and when I want. So it was the same
11:31:40 20 job in my opinion. I just was adjusting my hours and
11:31:44 21 time in a different way.
11:31:45 22 Q. But I mean --
11:31:47 23 A. So it wasn't a job as in having an employer. I'm
11:31:50 24 always my own employer for the most part.
11:31:52 25 Q. But when you quit to look after your son as much as

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11:56 1 you could --

11:31:56 2 A. Correct.

11:31:57 3 Q. -- although that -- your son wasn't paying you, but
11:32:01 4 did you have quite a lot of duties that you might
11:32:04 5 regard as more busy than a job?

11:32:06 6 A. Yes, yes.

11:32:08 7 Q. It has been suggested that the position that you
11:32:20 8 occupied in consulting with patients at Women's Health
11:32:26 9 Care Services could be described by the prosecutor as
11:32:28 10 a one-stop shop or that you could be described as
11:32:33 11 someone who would allow patients to phone it in or
11:32:37 12 that you would be a rubber stamp for Dr. Tiller.

11:32:41 13 Would you share with the ladies and gentlemen of the
11:32:44 14 jury how accurate you feel any of those labels are.

11:32:47 15 A. Well, first of all, Mr. Disney told me he would not
11:32:50 16 refer to me as a rubber stamp. So if he did, then he
11:32:53 17 actually violated what he told me. So it does make
11:32:54 18 me --

11:32:54 19 MR. DISNEY: Your Honor, if Mr. Monnat can
11:32:57 20 point to where I referred to her as a rubber stamp. I
11:33:00 21 mean I let him say it. If it's in the transcript, it
11:33:03 22 is. But I don't believe it's an accurate description
11:33:05 23 of what I said.

11:33:06 24 MR. MONNAT: Your Honor, I heard him say it
11:33:08 25 in a number of motions.

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11:33:10 1 THE COURT: I don't recall the statement
11:33:11 2 yesterday. So I will sustain the objection as to
11:33:14 3 that.
11:33:15 4 MR. MONNAT:
11:33:15 5 Q. Were you any kind of a rubber stamp for Dr. Tiller?
11:33:17 6 A. No, I was not.
11:33:18 7 Q. And were you any kind of facilitator of this being a
11:33:23 8 one-stop shop where anybody could get an abortion?
11:33:25 9 A. No.
11:33:26 10 Q. How do you feel about the suggestion that this was
11:33:28 11 that kind of operation?
11:33:29 12 A. Well, it's outrageous. Very upset.
11:33:40 13 Q. And what kind of relationship do you feel that you
11:33:44 14 really have with your patients that is different than
11:33:48 15 that?
11:33:48 16 A. I always put the patient at the center of every
11:33:55 17 interaction. I would not be able to live with doing
11:33:59 18 other than that. It's very difficult. I always find
11:34:03 19 that to be my highest and most important duty, to
11:34:06 20 never facilitate harm for anyone.
11:34:10 21 And this is a very, very serious process and
11:34:14 22 a very difficult decision for people. And I see
11:34:18 23 myself as, you know, the, quote-unquote, physician or
11:34:22 24 professional. But I also have a higher duty to that
11:34:26 25 in a spiritual and psychological sense too in the long

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11:34:30 1 run. And I don't want to make a mistake. So I, you
11:34:34 2 know, take that extremely seriously.

11:34:38 3 If someone tells me right off the bat that
11:34:41 4 they have reservations, I would never proceed. I --
11:34:50 5 you know, make sure that every aspect of their health,
11:34:52 6 their physical, psychological, emotional and spiritual
11:34:56 7 health are all being addressed.

11:34:58 8 Q. Thank you very much, doctor.

11:35:00 9 It's also been suggested that unless you had
11:35:04 10 this opportunity to consult with women patients at
11:35:08 11 Women's Health Care Center after September of 2002
11:35:13 12 when you shut down your clinic you wouldn't had any
11:35:15 13 other way to get income?

11:35:18 14 A. Oh, no.

11:35:18 15 Q. Can you respond -- tell the ladies and gentlemen of
11:35:22 16 the jury what opportunities you would have had.

11:35:23 17 A. Basically there isn't much of a job shortage for
11:35:26 18 physicians. It's quite easy to obtain other
11:35:31 19 positions.

11:35:32 20 Q. And if Dr. -- if you had ever declined to consult with
11:35:38 21 patients at Women's Health Care Services any further,
11:35:41 22 how hard would it be for you to find a good paying
11:35:44 23 job?

11:35:44 24 A. Not difficult at all.

11:35:46 25 Q. If you -- well, share with the ladies and gentlemen of

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11:35:51 1 the jury what you're doing now, please.

11:35:52 2 A. I'm currently working as a physician for a number of

11:35:57 3 correctional facilities in my area because I can do

11:35:59 4 that in the evenings and on weekends. And I'm soon to

11:36:04 5 be a full-time student and getting a degree in public

11:36:08 6 health and also working on a clinical research career.

11:36:14 7 Q. Are you also a medical director somewhere?

11:36:17 8 A. Oh, yes. I'm also the medical director for a plasma

11:36:21 9 center in Lawrence -- oh, in Kansas. Northeast

11:36:24 10 Kansas.

11:36:24 11 Q. The prosecutor asked you on direct examination if you

11:36:31 12 were giving your testimony under a grant of immunity,

11:36:34 13 correct?

11:36:34 14 A. Yes.

11:36:34 15 Q. And you said that you were, correct?

11:36:36 16 A. Yes.

11:36:37 17 Q. That means that the prosecutor has promised not to use

11:36:42 18 anything you say today to prosecute you, right?

11:36:48 19 A. Yes.

11:36:48 20 Q. And you were first given immunity by Phill Kline when

11:36:54 21 he was the attorney general and he and his senior

11:36:58 22 assistant wanted you to provide information in

11:37:02 23 December of 2006, correct?

11:37:03 24 A. Yes.

11:37:04 25 Q. And then just about 60 days ago you were given a grant

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11:37:09 1 of immunity by Steven Six, the current attorney
11:37:14 2 general, that the prosecutor talked to you about
11:37:17 3 yesterday.
11:37:18 4 A. Yes.
11:37:18 5 Q. And that was State's Exhibit A yesterday, correct?
11:37:24 6 A. I believe so, yes.
11:37:26 7 Q. We've already talked about the fact that Phill Kline's
11:37:35 8 Attorney General's Office subpoenaed you back in
11:37:37 9 December of 2006 to testify at a secret proceeding
11:37:42 10 called an inquisition, correct?
11:37:43 11 A. Yes.
11:37:44 12 Q. You complied with the subpoena and appeared, correct?
11:37:48 13 A. Yes.
11:37:49 14 Q. And did you have a lawyer with you then?
11:37:50 15 A. Yes, I did.
11:37:51 16 Q. And were you put under oath then?
11:37:53 17 A. Yes, I was.
11:37:54 18 Q. Just like you were yesterday?
11:37:56 19 A. Yes.
11:37:56 20 Q. And just like you understand you're under oath today?
11:37:59 21 A. Correct.
11:37:59 22 Q. And the prosecutor for Phill Kline then asked you
11:38:05 23 questions?
11:38:05 24 A. Yes.
11:38:06 25 Q. And the prosecutor for Phill Kline asked you about

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11:38:08 1 your educational background and your career history;
11:38:12 2 is that correct?
11:38:12 3 A. Yes.
11:38:12 4 Q. By the way, Dr. Tiller wasn't present at that secret
11:38:16 5 inquisition, was he?
11:38:18 6 A. No, he was not.
11:38:19 7 Q. And he did not have a lawyer there that day either,
11:38:22 8 did he?
11:38:22 9 A. No.
11:38:23 10 Q. The prosecutor for Phill Kline started to ask you
11:38:26 11 questions about abortions in abortion clinics,
11:38:29 12 correct?
11:38:30 13 A. Yes.
11:38:30 14 Q. And when he started to ask you about abortions in
11:38:32 15 abortion clinics, your lawyer advised you to assert
11:38:36 16 your Fifth Amendment right not to answer those
11:38:38 17 questions, correct?
11:38:39 18 A. Yes, he did.
11:38:40 19 Q. And did you take your lawyer's advice?
11:38:42 20 A. Yes, I did.
11:38:43 21 Q. And did you decline to answer those questions?
11:38:46 22 A. Yes.
11:38:47 23 Q. You understood that you had a Fifth Amendment right
11:38:50 24 not to answer questions if your answers might be used
11:38:54 25 to prosecute you, right?

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- 11:38:55 1 A. Yes.
- 11:38:55 2 Q. And at that time you feared that Phill Kline, the
- 11:39:01 3 attorney general at that time, might want to prosecute
- 11:39:04 4 you, right?
- 11:39:04 5 A. It was open season on all of us under him.
- 11:39:08 6 Q. That fear was why you asserted your right not to
- 11:39:14 7 answer questions about abortions in abortion clinics,
- 11:39:17 8 right?
- 11:39:18 9 A. Yes.
- 11:39:18 10 Q. But that fear of open season prosecution on abortion
- 11:39:24 11 providers didn't stop that prosecutor from asking you
- 11:39:28 12 questions because he gave you a grant of immunity
- 11:39:31 13 which meant that you could no longer decline to answer
- 11:39:35 14 questions on Fifth Amendment grounds because they
- 11:39:39 15 agreed not to use anything you said against you, true?
- 11:39:41 16 A. Correct.
- 11:39:42 17 Q. You mentioned that you feared this open season on the
- 11:39:58 18 prosecution of abortion providers when you asserted
- 11:40:01 19 your Fifth Amendment rights because you feared Phill
- 11:40:06 20 Kline would want to prosecute you, correct?
- 11:40:07 21 A. Yes.
- 11:40:08 22 Q. When just 60 days ago you got a second grant of
- 11:40:15 23 immunity from Steven Six, I take it that you also
- 11:40:20 24 feared that Steven Six might want to prosecute you?
- 11:40:23 25 A. Yes.

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11:40:23 1 Q. And for the record, let me hand you that grant of
11:40:27 2 immunity from Phill Kline.
11:40:29 3 MR. DISNEY: She has it on her right --
11:40:31 4 well, from Kline --
11:40:31 5 MR. MONNAT: Yes.
11:40:33 6 MR. DISNEY: -- or Six?
11:40:34 7 MR. MONNAT: Yes.
11:40:51 8 (Off-the-record discussion.)
11:40:51 9 THE WITNESS: We have it here, I think.
11:40:53 10 MR. MONNAT: May I approach, Your Honor?
11:40:54 11 THE COURT: Yes.
11:41:30 12 MR. MONNAT: May I approach, please, Your
11:30 13 Honor?
11:41:32 14 THE COURT: Yes.
11:41:32 15 MR. MONNAT:
11:41:32 16 Q. Let me hand you what's been marked for identification
11:41:35 17 as Defendant's Exhibit 36 and ask you if that's the
11:41:39 18 grant of immunity that you received from Phill Kline
11:41:44 19 back in 2006?
11:41:46 20 A. Yes, it is.
11:41:48 21 MR. MONNAT: I would move to admit that,
11:41:49 22 please, Your Honor.
11:41:50 23 MR. DISNEY: No objection.
11:41:50 24 THE COURT: Okay. Defendant's Exhibit 36
11:52 25 will be admitted.

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11:55 1 MR. MONNAT: Thank you, Your Honor.

11:41:57 2 MR. MONNAT:

11:42:07 3 Q. Did you ask for the grant of immunity from Steven Six
11:42:10 4 just 60 days ago or ask for it through your attorney
11:42:14 5 because you thought you were guilty of something?

11:42:16 6 A. No.

11:42:17 7 Q. You originally feared prosecution from Phill Kline
11:42:22 8 because of things you had read about or heard about in
11:42:26 9 the news about Phill Kline, correct?

11:42:27 10 A. Yes.

11:42:28 11 Q. And did those things include the fact that Phill Kline
11:42:32 12 had twice run for attorney general as an anti-abortion
12:36 13 candidate?

11:42:36 14 A. Yes.

11:42:37 15 Q. Was one of the things you feared that Phill Kline had
11:42:41 16 fought for years to get ahold of the private medical
11:42:45 17 records of Dr. Tiller's patients?

11:42:47 18 A. Yes.

11:42:48 19 Q. And you were aware that Phill Kline had used his
11:42:51 20 pursuit of Dr. Tiller's patient records as a campaign
11:42:55 21 bragging point for re-election and election, correct?

11:42:59 22 A. Yes.

11:42:59 23 Q. You were aware that Phill Kline even went on national
11:43:03 24 television to talk about the patient records he got
143:06 25 from Dr. Tiller, correct?

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43:07 1 A. Yes.

11:43:07 2 Q. And it was your impression that Phill Kline was using

11:43:12 3 the power of the Kansas Attorney General's Office to

11:43:16 4 shut down abortion clinics, correct?

11:43:18 5 A. Yes, his only objective.

11:43:21 6 Q. I'm sorry?

11:43:22 7 A. That was his only objective from my perspective.

11:43:25 8 Q. And I take it that when you asked for those grants of

11:43:28 9 immunity, it crossed your mind that one way to shut

11:43:31 10 down abortion clinics was to prosecute doctors who

11:43:35 11 performed even lawful abortions, correct?

11:43:38 12 A. That's correct.

43:39 13 Q. Or doctors who otherwise lawfully consulted with

11:43:43 14 abortion patients, correct?

11:43:44 15 A. Yes.

11:43:45 16 Q. And you were a doctor who performed abortions?

11:43:49 17 A. Yes.

11:43:49 18 Q. And you were a doctor who consulted on abortion

11:43:53 19 patients, correct?

11:43:54 20 A. Yes.

11:43:54 21 Q. Even after you got immunity from Phill Kline, as in

11:44:00 22 Defendant's Exhibit 36, you still feared prosecution

11:44:03 23 from Phill Kline, correct?

11:44:05 24 A. Yes.

44:05 25 Q. And that was partially because you heard that right

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11:44:09 1 after they interrogated you at the inquisition in
11:44:14 2 December of 2006 Phill Kline filed charges against
11:44:20 3 Dr. Tiller right before he was to go out of office; is
11:44:24 4 that correct?
11:44:24 5 A. Yes.
11:44:24 6 Q. But I take it that you quickly learned that Sedgwick
11:44:28 7 County District Attorney Nola Foulston had quickly
11:44:31 8 gotten those charges dismissed, correct?
11:44:32 9 A. Yes.
11:44:33 10 Q. Now, when short-term Attorney General Paul Morrison
11:44:39 11 became attorney general, did you continue to fear
11:44:43 12 prosecution?
11:44:47 13 A. No, actually I figured everything would get
11:44:47 14 straightened out.
11:44:48 15 Q. All right. And did you later begin to fear
11:44:52 16 prosecution under even short-term Attorney General
11:44:55 17 Paul Morrison?
11:44:56 18 A. Yes, I did.
11:44:57 19 Q. Would you share with the jury why that was.
11:45:02 20 A. Because he came out with these crazy charges.
11:45:06 21 Q. The charges against Dr. Tiller that we're here in
11:45:10 22 court on?
11:45:10 23 A. Yes.
11:45:10 24 Q. And did you understand before you sought immunity from
11:45:19 25 Steven Six that anti-abortion activists are very

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45:29 1 committed to ending abortion?

11:45:30 2 A. Yes.

11:45:30 3 Q. Has it been your experience before you sought the

11:45:36 4 grant of immunity from Steven Six that abortion

11:45:39 5 activists can exert a lot of political pressure?

11:45:44 6 A. Yes. I continue to get requests from the Board of

11:45:47 7 Healing Arts regularly based on these people's

11:45:49 8 complaints.

11:45:49 9 Q. Did you ultimately learn that short-term Attorney

11:45:55 10 General Paul Morrison must be under a lot of political

11:45:58 11 pressure by anti-abortion activists when he filed the

11:46:02 12 criminal charges in this case?

11:46:03 13 A. Yes, I did.

11:46:04 14 Q. After a very short term, you understood Paul Morrison

11:46:10 15 resigned from being attorney general amidst a personal

11:46:16 16 scandal, correct?

11:46:17 17 A. Yes.

11:46:17 18 Q. Did your fear -- strike that.

11:46:26 19 Did you fear that you might be prosecuted

11:46:29 20 when Steven Six became attorney general and continued

11:46:33 21 to pursue the charges that short-term Attorney General

11:46:38 22 Paul Morrison had filed against Dr. Tiller?

11:46:40 23 A. Yes, I did.

11:46:41 24 Q. Is that because you think that Attorney General Steven

11:46:45 25 Six might even today also be under a lot of political

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16:48 1 pressure by anti-abortion activists?

11:46:51 2 A. Yes.

11:46:52 3 Q. Because -- you sought immunity because you were afraid

11:46:58 4 that if you didn't have immunity you might be

11:47:02 5 prosecuted just like Dr. Tiller is being prosecuted,

11:47:06 6 correct?

11:47:07 7 A. Yes.

11:47:07 8 Q. You sought immunity even though you don't think there

11:47:13 9 was anything illegal about your consultations with

11:47:17 10 patients at Women's Health Care Services, correct?

11:47:20 11 A. That's exactly right.

11:47:22 12 Q. Do you think you are innocent of any crime?

11:47:25 13 A. Yes, I do.

11:47:26 14 Q. You wanted immunity because even though you are

11:47:30 15 innocent of any crime, you feared you might even today

11:47:35 16 be prosecuted anyway?

11:47:37 17 A. Yes.

11:47:38 18 Q. Prosecuted just like Dr. Tiller is being prosecuted?

11:47:43 19 A. Correct.

11:47:47 20 MR. MONNAT: I don't have any further

11:47:48 21 questions. Thank you, Your Honor.

11:47:49 22 Thank you, Dr. Neuhaus.

11:47:51 23 MR. DISNEY: Your Honor, if you don't mind,

11:47:52 24 I'm going to ask questions from over here. I think

11:47:55 25 she can understand the questions, it appears, if you

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17:57 1 stand over here.

11:48:01 2 THE WITNESS: Thanks for that smart remark.

11:48:03 3 REDIRECT EXAMINATION

11:48:03 4 MR. DISNEY:

11:48:04 5 Q. Let's talk about this concept of a one-stop shop.

11:48:09 6 Prior to 1999 a patient could get a referral from out

11:48:15 7 of state and come in and see Dr. Tiller and obtain an

11:48:21 8 abortion, correct?

11:48:21 9 A. That's my understanding, yes.

11:48:24 10 Q. In 1999 the law changed; is that correct?

11:48:27 11 A. Yes.

11:48:28 12 Q. And the law required two Kansas physicians, correct?

11:48:33 13 A. That's right.

11:48:34 14 Q. So if a person flew in from out of state to obtain an

11:48:40 15 abortion, Dr. Tiller himself couldn't alone make the

11:48:47 16 determination, correct?

11:48:48 17 A. He needed to have a second opinion that concurred --

11:48:51 18 Q. A second Kansas physician, correct?

11:48:53 19 A. Correct.

11:48:53 20 Q. So my question is Dr. Tiller alone couldn't make that

11:48:59 21 determination?

11:48:59 22 A. Yes.

11:49:00 23 Q. And Dr. Tiller then after that law was passed sought

11:49:05 24 you out to provide that second opinion?

49:11 25 A. He -- me among other people, yes.

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11:49:14 1 Q. You among other people. He sought you and other
11:49:16 2 people out to come to his clinic to provide that
11:49:20 3 second opinion?
11:49:21 4 A. Yes.
11:49:21 5 Q. And so everything could be done in his shop, correct?
11:49:27 6 MR. MONNAT: Object that all these questions
11:49:29 7 are leading. And we remember back to yesterday, this
11:49:31 8 is his witness.
11:49:32 9 MR. DISNEY: Okay.
11:49:32 10 THE COURT: I will sustain the objection.
11:49:33 11 MR. DISNEY:
11:49:34 12 Q. So could everything be done in his shop? His clinic?
11:49:38 13 A. Yes.
11:49:39 14 Q. Okay. The other alternative would be to simply tell
11:49:46 15 the patient they had to go out and get a second
11:49:49 16 opinion?
11:49:49 17 A. Yes, that would be an option.
11:49:51 18 Q. But Dr. Tiller set it up so that everything could be
11:49:57 19 done in his clinic?
11:49:59 20 MR. MONNAT: That same objection, Judge.
11:50:00 21 MR. DISNEY:
11:50:01 22 Q. Did Dr. Tiller set it up so everything could be done
11:50:04 23 in his clinic?
11:50:05 24 A. You're asking me what he did. I don't know.
11:50:06 25 Q. Well, you do know. He called you and he asked you to

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10:09 1 come --

11:50:09 2 A. I know he called me. I will agree with that.

11:50:11 3 Q. And he asked you to come do it?

11:50:12 4 A. Yes, he did. The rest of it would be just speculation

11:50:15 5 on my part.

11:50:15 6 Q. Let's talk about this consulting model that you talked

11:50:18 7 about. When this -- you said your clinic was in

11:50:23 8 Westmoreland?

11:50:24 9 A. Yes.

11:50:24 10 Q. When you had a cardiologist come into Westmoreland,

11:50:30 11 did you ever meet that cardiologist's attorney?

11:50:33 12 A. I didn't have a need to, no.

10:35 13 Q. Did you ever talk with a cardiologist about the fee

11:50:39 14 that he was going to charge the patient?

11:50:41 15 A. No, not that I recall.

11:50:45 16 Q. Okay. Did you ever -- well, but in this case, you did

11:50:51 17 discuss with Dr. Tiller the fee that you were going to

11:50:54 18 charge, correct?

11:50:55 19 A. We discussed logistics. I don't exactly remember

11:50:59 20 discussing the fee. Did I say that I did?

11:51:01 21 Q. Well, ma'am, I'm asking you a question. Did you --

11:51:04 22 A. I -- it's been ten years, I'm sorry, I don't remember

11:51:07 23 exactly.

11:51:07 24 Q. Well, let me show you a document and see if it

11:51:10 25 refreshes your memory.

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11:51:11 1 I'm going to show you a document marked as
11:51:30 2 Defendant's Exhibit 18. And refer you to the second
11:51:35 3 page -- I'm sorry, the third page of that. And just
11:51:40 4 read this to yourself, if you can.
11:51:42 5 A. I can barely read it.
11:51:45 6 Q. Do the best you can.
11:51:47 7 A. Called --
11:51:48 8 Q. To yourself.
11:51:49 9 A. Oh.
11:51:53 10 I can read some of it.
11:51:57 11 Q. Does that refresh your memory on discussing with
11:52:01 12 Dr. Tiller the fee that you were going to charge?
11:52:04 13 A. No, not really. That's not my writing.
11:52:07 14 Q. Is it possible that when you -- when Dr. Tiller called
11:52:11 15 you on August 25th, 1999, that you discussed with him
11:52:25 16 the fee that you would charge?
11:52:28 17 A. It's possible.
11:52:30 18 Q. And is that part of the consulting model that you used
11:52:34 19 in Westmoreland?
11:52:35 20 A. That was almost 15, 20 years ago. I don't think that
11:52:43 21 we ever did, but --
11:52:44 22 Q. Right, it wasn't part of the consulting model?
11:52:46 23 A. Frankly, he could -- whoever wrote that could have
11:52:48 24 just been doodling. I certainly do that when I'm on
11:52:52 25 the telephone. I write all sorts of things on a piece

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11:52:54 1 of paper.

11:52:55 2 Q. Ma'am, I'm just trying to find out if you talked with

11:52:57 3 Dr. Tiller.

11:52:58 4 A. And I already told you --

11:52:59 5 Q. -- answer the question.

11:53:00 6 A. -- I don't recall. And I don't.

11:53:01 7 Q. Are you having trouble recalling that?

11:53:03 8 A. I'm having trouble recalling whether we discussed a

11:53:06 9 fee, yes.

11:53:07 10 Q. why would you even discuss the fee with Dr. Tiller?

11:53:10 11 A. well, you're the one bringing it up.

11:53:12 12 Q. well --

11:53:12 13 A. why don't you ask Dr. Tiller.

11:53:14 14 Q. why don't you tell us why it would even come up in

11:53:17 15 your conversation.

11:53:18 16 A. I don't know.

11:53:19 17 Q. Is it that Dr. Tiller wanted to set up a situation

11:53:23 18 where you -- it would be a one-stop shop?

11:53:26 19 MR. MONNAT: Every one of the questions,

11:53:28 20 Judge, is impermissible because they're leading his

11:53:31 21 own witness, which the law says you can't do.

11:53:34 22 MR. DISNEY: Well, Your Honor, I would ask

11:53:35 23 to treat her as a hostile witness.

11:53:37 24 THE COURT: Okay. If counsel will approach

11:53:39 25 the bench.

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11:53:47 1 (An off-the-record discussion between
11:53:47 2 Court and counsel was had at the bench
11:53:47 3 outside the hearing of the jury and
11:53:47 4 defendant; thereupon, the following
11:53:47 5 proceedings continued in the hearing of
11:54:01 6 the jury and defendant.)

11:54:01 7 THE COURT: Okay. We're going to go ahead
11:54:02 8 and take the lunch break. We're almost at 12 o'clock
11:54:05 9 anyway. And I need to speak with the attorneys. So
11:54:08 10 we will go ahead and take our lunch break until 1:30.
11:54:11 11 And, as always, you're free go anywhere you want to.
11:54:14 12 If you will just be back by 1:30, we will be ready to
11:54:18 13 resume. So you may go ahead and go with the bailiff.

11:54:23 14 (The jury left the courtroom, after
11:54:23 15 which the following proceedings were
11:57:24 16 had.)

11:57:24 17 THE COURT: The State has asked that the
11:57:27 18 witness be treated as a hostile witness for purposes
11:57:30 19 of examination by the State.

11:57:32 20 MR. MONNAT: Judge, I would like to make a
11:57:33 21 proffer before that if I could. And we might want the
11:57:37 22 court reporter to read something back. In the shuffle
11:57:40 23 of moving notebooks from the place where I questioned
11:57:43 24 witnesses, I didn't exactly hear what I understand
11:57:47 25 from other counsel Mr. Disney said as he began his

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11:57:52 1 cross-examination.

11:57:53 2 I think what he said is, Your Honor, I would
11:57:55 3 like to ask questions from over here because I think
11:58:00 4 she can understand questions better from over here.
11:58:06 5 And I think the witness replied thank you for that
11:58:09 6 smart remark, which I did hear, but I didn't hear what
11:58:12 7 was said.

11:58:12 8 Now, I think it's out of hand. I don't
11:58:16 9 think a prosecutor can come up here, insult a witness
11:58:20 10 by his opening testimony and then beg Your Honor that
11:58:25 11 she's a hostile witness and he ought to be able to
11:58:29 12 lead her. That's just not right. He has made me
11:58:33 13 object again and again during his redirect examination
11:58:37 14 on the basis of blatantly leading questions, which is
11:58:43 15 improper to begin with. And misconduct to begin with.

11:58:47 16 And now he wants to beg Your Honor to let
11:58:51 17 him ask those leading questions by saying that the
11:58:54 18 witness is hostile? I mean in every area of the law
11:58:59 19 there is a doctrine that says that the prosecution
11:59:04 20 can't avail itself and exploit a situation that the
11:59:09 21 prosecution itself has created. There could be
11:59:11 22 nothing clearer than that's what happened here. He
11:59:14 23 goes up to question her, insults her by an
11:59:18 24 impermissible prosectorial misconduct comment and then
11:59:23 25 has some problems with her answering his leading

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11:59:26 1 questions and now he wants to beg that he ought to be
11:59:28 2 able to continue to lead her?

11:59:30 3 It's completely improper. It's prosecutorial
11:59:33 4 misconduct. And I ask that a situation he created
11:59:38 5 with improper insults cannot by any stretch of the
11:59:41 6 imagination or jurisprudence be permitted. And I
11:59:46 7 would ask Your Honor to ignore really that frivolous
11:59:49 8 complaint.

11:59:50 9 MR. DISNEY: Your Honor, you've seen the
11:59:51 10 witness's demeanor. You've seen what she can recall,
11:59:54 11 what she can't recall. You saw how she answered
11:59:57 12 Mr. Monnat's question not once not being able to
12:00:01 13 recall anything. And you've seen how she has treated
12:00:03 14 me when I've asked her questions.

12:00:04 15 She is a witness who has chosen a side and
12:00:08 16 is answering, trying to protect that side. That is
12:00:11 17 the remedy there is to allow me to ask her
12:00:15 18 cross-examination questions. This is the very
12:00:17 19 definition of a hostile witness.

12:00:19 20 MR. MONNAT: Judge, it ought to be a two-way
12:00:22 21 street. We had this come up during the motions
12:00:24 22 hearing when I would ask Phill Kline what's your name
12:00:26 23 and he would give a two-day speech that wasn't in any
12:00:29 24 way related to my questions. We filed a brief on
12:00:31 25 that. We argued the law on that. And it was decided

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10:34 1 that, no, I couldn't lead Phill Kline, Steve Maxwell,
12:00:40 2 Eric Rucker as possible witnesses because there had
12:00:44 3 not been a sufficient foundation to demonstrate their
12:00:48 4 hostility. What is good for the goose is good for the
12:00:51 5 gander. The only demonstration of hostility here was
12:00:55 6 engineered, created, designed, and planned by Barry
12:01:00 7 Disney. It's misconduct and it doesn't entitle him to
12:01:03 8 lead this witness.

12:01:04 9 MR. DISNEY: Your Honor, her demeanor
12:01:06 10 started yesterday with my questioning. So I'm just
12:01:08 11 asking you to take everything that's been gone on so
12:01:11 12 far and allow me to ask her -- and treat her as
01:14 13 hostile.

12:01:14 14 THE COURT: Well, I think I have to discount
12:01:16 15 the one remark that you mentioned because I agree,
12:01:19 16 that that was an induced remark from the witness when
12:01:22 17 he made that statement. There was no objection so I
12:01:25 18 didn't admonish him at the time. But I do think that
12:01:28 19 that was improper to be making the comment.

12:01:31 20 Something for closing arguments if he wants
12:01:32 21 to argue to the jury that she has a better memory when
12:01:35 22 one side is asking the questions than when the other
12:01:38 23 is. Then that's something he can reserve for closing
12:01:40 24 arguments. But it's not something to use at this
01:44 25 stage of the proceeding. So I would have to disregard

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12:01:47 1 her comment in response because it was induced by the
12:01:52 2 prosecution.

12:01:53 3 But beginning yesterday there -- the
12:01:58 4 prosecutor's not asked for this, but the idea was
12:02:02 5 planted in my mind yesterday during some of her
12:02:05 6 testimony that she appeared to have a lot more memory
12:02:10 7 problems, I have to agree with the State in his
12:02:12 8 conclusion. But certainly not something I want to
12:02:14 9 share with the jury. But that she did seem to be
12:02:19 10 evasive in his -- in answers to his questions as
12:02:22 11 opposed to defense counsel.

12:02:25 12 And obviously from her testimony she's not
12:02:28 13 philosophically aligned with the State's prosecution
12:02:31 14 in this case. Even though she's a State's witness,
12:02:33 15 she obviously is fearful of prosecution of abortion
12:02:40 16 doctors. And would not likely see the prosecutor in
12:02:45 17 this case as a friendly ally. But that came out in
12:02:49 18 some of the remarks yesterday, like the toilet paper
12:02:52 19 remark, and things that seemed to be quips coming from
12:02:55 20 her to Mr. Disney, is taking shots at him. It doesn't
12:03:00 21 justify him taking a shot at her today, but,
12:03:03 22 nevertheless, I think it became quite obvious that she
12:03:06 23 was not friendly to the cause of the State's case
12:03:10 24 here. So I think it does justify allowing the State
12:03:14 25 to use cross-examination of the witness from this

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12:03:17 1 point on.

12:03:18 2 And the reason there's -- I think there's a
12:03:20 3 distinction between this and Phill Kline and the other
12:03:22 4 witnesses that have testified at the hearing is
12:03:24 5 certainly they have that same motive to not be
12:03:27 6 cooperative. But I didn't see the degree of
12:03:31 7 hesitation or what would appear to be intentional
12:03:37 8 animosity going back and forth. They appeared at that
12:03:40 9 time to be cooperative and that's the reason I did not
12:03:44 10 grant the defense latitude in the cross-examination at
12:03:49 11 that time. But I don't think we can really compare,
12:03:52 12 just because of a ruling on one hearing, anyway, that
12:03:56 13 it would apply to another hearing. But I think the
12:03:58 14 State has met the threshold from this point to be
12:04:02 15 given latitude of cross-examination of the witness.

12:04:04 16 MR. MONNAT: Judge, I do appreciate you
12:04:06 17 recognizing that Mr. Disney's comment was improper. I
12:04:10 18 would request that he be admonished in front of the
12:04:12 19 jury so they don't believe that that comment has the
12:04:17 20 Court's approval. And I think they need to hear that
12:04:19 21 from the Court.

12:04:20 22 THE COURT: I want to do it in the least
12:04:24 23 confrontational manner. I will just say that there
12:04:28 24 was a remark of the prosecutor made at the beginning
12:04:31 25 of redirect examination, I would direct them to

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12:04:33

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disregard the comment if they heard it. I don't want to restate it because that may cause more problems than it solves.

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So if the jurors caught it, like you indicated that you didn't catch it initially, and maybe the jurors didn't hear it either. I took it as a statement that I thought was best left for closing arguments. It doesn't belong in examining the witness. So I will admonish them just if they heard the comment made by the prosecution at the beginning of the redirect to disregard.

12:05:07

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MR. MONNAT: Thank you, Your Honor.

12:05:07

13

THE COURT: Okay. We will resume, then, at

12:05:09

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1:30.

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MR. DISNEY: Thank you.

16

(Further proceedings were held and are contained under separate cover.)

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C E R T I F I C A T E

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

I, Sandra J. Berger, a Certified Shorthand Reporter, and a regularly appointed, qualified, and acting Official Reporter of the 18th Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype shorthand the above and foregoing proceedings in Case No. 07 CR 2112, State of Kansas, Plaintiff, v. George R. Tiller, Defendant, heard on the 24th day of March, 2009, before the Honorable Clark V. Owens, II, Judge of Division 20 of said Court.

I further certify that at the request of Mr. Dan Monnat, attorney for the Defendant, a transcript of my shorthand notes first taken in machine shorthand was reduced to writing with computer-aided transcription, and that the foregoing transcript, consisting of 54 typewritten pages, is a true copy of all of the requested proceedings, all to the best of my knowledge and ability

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Wichita, Sedgwick County, Kansas, this 24th day of March, 2009.



SANDRA J. BERGER
CERTIFIED SHORTHAND REPORTER

SANDRA J. BERGER, CSR
OFFICIAL COURT REPORTER

STATE OF KANSAS,

Plaintiff,

VS .

GEORGE R. TILLER,

Defendant.

Case No. 07 CR 2112

JURY TRIAL

PROCEEDINGS had and entered of record on March 24, 2009, before the Honorable Clark V. Owens, II, Judge of Division 20, Eighteenth Judicial District, Sedgwick County, Kansas.

APPEARANCES:

For the Plaintiff: Barry K. Disney
Kansas Attorney General's Office
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For the Defendant: Daniel E. Monnat
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For Dr. Neuhaus: Jack Focht
Foulston Siefkin
1551 North Waterfront
Wichita, Kansas 67206

I N D E X

WITNESSES

DIRECT	CROSS	REDIRECT	RECROSS
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KRISTIN NEUHAUS			
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by Mr. Disney		3	
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by Mr. Monnat			31
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by Mr. Disney		49	
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by Mr. Monnat			59
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1 THE COURT: I believe you had an
2 issue. Are we missing Mr. Disney? There he is.

3 MR. DISNEY: I'm sorry.

4 THE COURT: I was looking for you over
5 there.

6 MR. DISNEY: I'm sorry.

7 THE COURT: Do you have an issue that
8 you wanted to raise?

9 MR. MONNAT: Yes. One preliminary
10 matter, Your Honor. I know Your Honor made a
11 ruling earlier about whether Mr. Disney could
12 ask leading questions of this witness, but I
13 would move in limine to exclude any mention of
14 that finding before the jury or to label it as a
15 hostile witness situation.

16 THE COURT: Yes, that's the reason I
17 thought it was important to do it outside the
18 jury's presence, because I don't think that's
19 any concern of theirs. Any of my comments would
20 be improper for them to hear.

21 MR. MONNAT: All right. So if that's
22 the ruling --

23 THE COURT: So we'll just go ahead and
24 proceed with it and they won't even be advised
25 anything, unless you feel as though I need to

1 say on the record that he's allowed to ask
2 leading questions.

3 MR. MONNAT: No. And I don't think he
4 intends to or should mention Your Honor's
5 finding.

6 THE COURT: Yes.

7 MR. MONNAT: Then we have the one
8 question of the admonishment to take up when the
9 jury comes in.

10 THE COURT: Right.

11 MR. MONNAT: That's all I have. Thank
12 you.

13 THE COURT: Okay. You may bring in
14 the jury.

15 (Thereupon, the jury was seated in the
16 courtroom.)

17 THE COURT: Okay. Before we go on
18 with redirect, there is one thing I want to
19 point out to the jury, that as the State was
20 beginning with the redirect examination
21 Mr. Disney made a statement and the witness
22 responded to that statement. I don't know
23 whether you heard that or not, but I would tell
24 the jury to disregard both Mr. Disney's
25 statement and the witness's response to it. I'm

1 not going to repeat it because if you didn't
2 hear it I'd just as soon you not hear it, but if
3 you did hear it then you need to disregard it.
4 It's that very statement as he was approaching
5 the podium over there. Okay. You may go ahead
6 and resume.

7 MR. DISNEY: Thank you, Your Honor.

8 BY MR. DISNEY:

9 Q. Doctor, you feel very strongly in your
10 pro-choice views. Correct?

11 A. That's fair, yes.

12 Q. And you disagree with the law that requires an
13 abortion doctor to get a second physician for an
14 opinion. Correct?

15 A. My understanding of Doe V. Bolton --

16 Q. Ma'am, I'm just asking if you agree or disagree
17 with that law.

18 A. Yeah. I agree with Doe V. Bolton, yes.

19 Q. Do you agree that it's proper to have a second
20 physician?

21 A. No. It should not be necessary. It's
22 unconstitutional.

23 Q. Okay. So the very law that we're here on today
24 that the defendant's being prosecuted for, you
25 don't think that should be the law?

1 A. My understanding of the interpretation of it is ⁶
2 it's probably un --
3 Q. Ma'am, did you understand my question?
4 A. You --
5 Q. Did you understand my question or not?
6 A. You're asking if I agree with it?
7 Q. I'm just asking if you agree with the law that
8 the defendant is being prosecuted under.
9 A. I feel that it's probably unconstitutional, yes.
10 Q. Thank you. You feel that this is a political
11 prosecution. Correct?
12 A. Yes, I do.
13 Q. You feel Phill Kline was very pro-life.
14 Correct?
15 A. Very anti-choice, yes.
16 Q. Okay. And what was Mr. Morrison?
17 A. He was supposed to be more moderate and more
18 balanced.
19 Q. He was opposite of Mr. Kline. Correct?
20 A. I don't know if he personally is, but his
21 political views were supposed to be more
22 balanced, yes.
23 Q. And it was actually under Mr. Morrison's reign
24 that these charges were brought; is that
25 correct?

- 1 A. Yes.
- 2 Q. Do you know Attorney General Stephen Six's view
3 on abortion?
- 4 A. No, I do not.
- 5 Q. Well, Attorney General Six is the current
6 attorney general. Correct?
- 7 A. Yes.
- 8 Q. He could have ordered these charges be
9 dismissed. Correct?
- 10 A. Yes.
- 11 Q. But you don't even know his view on abortion?
- 12 A. No, I don't, exactly. I think he's pro-choice,
13 but I'm not sure.
- 14 Q. Okay. So if he is pro-choice then a pro-choice
15 attorney general has allowed these charges to
16 continue. Correct?
- 17 A. Yes, that's correct.
- 18 Q. And yet you still think they're political
19 charges?
- 20 A. Yes, I do.
- 21 Q. Now, one reason you agreed to do the consulting
22 for the defendant is because you needed the
23 money. Correct?
- 24 A. No, that wasn't it at all.
- 25 Q. Do you need -- isn't it true that in March of

1 1999 the Board of Healing Arts filed a
2 disciplinary complaint against you that
3 restricted your license?

4 MR. MONNAT: Object as irrelevant,
5 Your Honor, and 60-445.

6 THE COURT: Okay. Could counsel
7 approach the bench for a minute.

8 (Conference at the bench between Court
9 and counsel, out of the hearing of
10 the jury.)

11 THE COURT: What I was wanting to ask
12 counsel is I have no idea what the answer to the
13 question is because I don't -- I don't have any
14 knowledge of what the complaint was about or
15 whether there would be any relevancy.

16 MR. DISNEY: Your Honor, the complaint
17 was because of an improper control in the -- in
18 her procedures and it had to do with
19 anesthesiology and using a certain drug. It
20 wasn't a bad act or a crime, but there was a
21 restriction placed on her license in March of
22 1999. She has testified about all these
23 altruistic reasons as to why she agreed to do
24 the consulting, and I feel that I have a right
25 to point out that there are -- there were

1 restrictions on her license that prevented her
2 from doing abortions and that I have the right
3 to present that to the jury as a reason why she
4 started doing the consulting, that she was in
5 need. They're the ones that opened the door by
6 presenting all these altruistic reasons why she
7 did it.

8 MR. MONNAT: Here's the problem with
9 that. She was asked why she continued to work
10 one day a week after she shut down her practice
11 in September of 2002 and then she gave her
12 reasons for that. That was in 2002. These
13 charges are in 2003. He wants to bring up that
14 she needed this job in 1999 because of
15 restrictions on her license, but she already had
16 another clinic from 1999 to 2002. So the
17 probative value of these charges or these
18 restrictions on her license are by far
19 outweighed by their prejudicial value besides
20 simply being irrelevant.

21 MR. DISNEY: It's not -- number one,
22 this isn't the defendant. This is a witness.
23 She has made the comment that she's not doing it
24 for the money, she's doing it for all these
25 great reasons, and I should get to point out

1 that she -- that there is a reason why she
2 needed the money.

3 THE COURT: Didn't she already say
4 something in front of the jury about being
5 restricted on anesthesiology? I was thinking
6 I'd already heard testimony but -- I didn't know
7 the details as to why it was restricted or
8 anything more, but I think she has already said
9 that she had a restriction on that and so I'm
10 not sure that we're going to be getting into
11 anything that the jury hasn't already heard.
12 But I was thinking that at most limit it to
13 the -- only the part that is -- that would be in
14 any way relevant. You know, the basis behind it
15 or whether it involved abortions, I don't think
16 we -- that probably isn't relevant. It's just
17 that she had some restriction that related to
18 anesthesiology procedures and that that had some
19 restriction upon her -- the types of procedures
20 that she can have or something to try to make it
21 as generic as possible but yet still allow him
22 to explore if she had limitations on her
23 employment because of that.

24 MR. MONNAT: Well, if she's already
25 mentioned that, it was in response to a question

1 of his and now it's just cumulative and improper.
2 redirect examination. It's completely out of
3 the pertinent time span because it's not talking
4 about 2002 and 2003, which is what was asked
5 about on cross examination. So the probative
6 value is zero but the prejudicial value exceeds
7 that by a great many numbers, at least any
8 reason to get into it even in the time span.

9 THE COURT: What year was that?

10 MR. DISNEY: As I understand, it was
11 in March of 1999 that the complaint was filed
12 and then she took the consulting in August of
13 '99 and then the final order came down in
14 September of '99.

15 MR. MONNAT: And nothing was asked on
16 cross examination about March of 1999.

17 THE COURT: Well, I think that the
18 State's entitled to do it to show the reason
19 for -- at least a potential reason for her
20 employment -- I'm using the wrong term,
21 employment, but her agreement to provide
22 consulting services. But yet I understand that
23 it -- I want to limit any prejudicial effect,
24 but yet I don't want to make it so she can't
25 explain what's behind it all. But is there a

1 way it can be asked that she had some
2 limitations without showing what it was for or
3 what types of procedures that she --

4 MR. DISNEY: I'm just going to ask if
5 she had restrictions.

6 MR. MONNAT: Well, that's worse,
7 because that sounds like that it was for some
8 malfeasance or some malpractice on her part. I
9 mean, the reality is, as Your Honor already
10 recognized, she already mentioned it and they
11 already heard it and there's no point in going
12 into it and it's improper redirect.

13 THE COURT: Well, it was something to
14 do with anesthesia on a patient, so can it be
15 asked in a way that doesn't, you know, put her
16 in a bad light just because of that?

17 MR. DISNEY: I can do that.

18 THE COURT: It would just be because
19 of some restrictions on her ability to use
20 anesthesia in procedures, that it was limited to
21 some degree, and whatever degree that would be
22 is I'm sure what you're wanting to pursue.

23 MR. DISNEY: I think I can do that.

24 THE COURT: Okay. Well, let's do it
25 as much as possible without making reference to

1 the complaint or that it was -- what was behind
2 it, unless the defense feels as though it's
3 necessary to explain it for their point of view
4 to rehabilitate her.

5 MR. MONNAT: Can we check one other
6 thing?

7 THE COURT: Okay.

8 MR. MONNAT: Judge, just reviewing the
9 record, I don't see anything that brings this
10 situation up to the time span of the present
11 charges or anything within the time span of what
12 the cross examination was or anything in the
13 time span that she was asked about on cross
14 examination, which was after you shut down your
15 practice in Lawrence in 2002 why did you
16 continue to come down to Women's Health Care
17 Services. This is back in 1999 or 2000, so I
18 just don't see that it has any relevancy. It
19 only has a tendency to prejudice.

20 THE COURT: Well, I'm going to
21 overrule the objection. I'm going to allow him
22 to go ahead and pursue it but do so in a manner
23 in which you can avoid getting into the reasons
24 behind it, unless the defense feels that it's
25 necessary to actually rehabilitate her to

1. explain the reasons why she had a limitation.
2. And if that's -- then you're free to
3. rehabilitate her if you feel you need to, but
4. I'll restrict the State on trying to keep away
5. from all the reasons behind it and it would just
6. be making reference that she had a restriction.

7. MR. MONNAT: So we don't have to make
8. a continuing objection, may we have a continuing
9. objection on the grounds already stated?

10. THE COURT: Yes, it will be considered
11. a continuing objection.

12. (The following proceedings continued
13. in the hearing of the jury.)

14. BY MR. DISNEY:

15. Q. Dr. Neuhaus, shortly before being contacted by
16. the defendant and asked to do this consulting
17. work, you had restrictions placed on your
18. license by the Kansas Board of Healing Arts.
19. Correct?

20. A. Sometime in there there was some process that
21. was an ongoing thing regarding controlled
22. substances, I believe.

23. Q. And it's your -- would it be fair that this was
24. due to something that happened with an employee
25. at your clinic, not something you yourself did?

- 1 A. Yes, that's correct.
- 2 Q. But the effect of that is that you were no
3 longer able to perform abortions; is that
4 correct?
- 5 A. Oh, no. No, that's not correct at all.
- 6 Q. Using -- you had restrictions on your ability to
7 use --
- 8 A. I just -- I had to have a pharmacist review my
9 logs and keep better records and send copies of
10 reports.
- 11 Q. And is it right after this that you agreed to
12 start doing this consultation with Dr. Tiller?
- 13 A. Well, one thing that hasn't come up --
- 14 Q. Well, just answer my question.
- 15 A. I don't remember exactly the dates.
- 16 Q. Okay. Did you tell Dr. Tiller that you would be
17 glad to do the consultations because you needed
18 the money?
- 19 A. No, of course not.
- 20 Q. Now, talking about this consulting model in
21 Westmoreland, you talked about a cardiologist.
22 A cardiologist would be brought to the
23 Westmoreland clinic because you or the other
24 doctor did not have the expertise in cardiology.
25 Correct?

- 1 A. Correct.
- 2 Q. The cardiologist was brought in to provide the
3 opinion on some other area than what you were
4 seeing the patient for?
- 5 A. Correct.
- 6 Q. And there was no law against a financial or
7 legal affiliation between you and the
8 cardiologist, if one did exist. Correct?
- 9 A. I believe there would be some professional
10 malfeasance if there was some kind of
11 relationship that was improper, but I don't know
12 the details. It wasn't an issue in our case.
- 13 Q. All right. But certainly if there -- you could
14 be in practice with a cardiologist and he could
15 see one of your patients?
- 16 A. Right. Correct.
- 17 Q. So you don't know of anything that prevents --
18 prevented a cardiologist from having a legal or
19 financial affiliation with you and seeing one of
20 your patients?
- 21 A. Not that I can think of.
- 22 Q. But in this case you were not provided --
23 brought in to provide an opinion on a different
24 area, were you?
- 25 A. Correct.

- 1 Q. You were brought in to provide a second opinion
2 on the very same issue that Dr. Tiller was
3 seeing the patient on. Correct?
- 4 A. Yes.
- 5 Q. When the law changed to require a second Kansas
6 physician, the defendant could no longer rely
7 upon the out-of-state doctor as a reference or
8 as a referral. Correct?
- 9 A. Yes.
- 10 Q. I mean, it used to be that -- let's take a girl
11 from New York, needed or felt like she needed an
12 abortion. Her doctor could send her to Dr.
13 Tiller. Correct?
- 14 A. Yes.
- 15 Q. And her doctor would be the referring doctor?
- 16 A. Correct.
- 17 Q. And then Dr. Tiller would provide the second
18 opinion. Is that your understanding?
- 19 A. Essentially.
- 20 Q. Okay. That law changed then and said, no, it
21 has to be a Kansas doctor for the -- both
22 doctors have to be Kansas doctors?
- 23 A. Right.
- 24 Q. And so when the law changed, Dr. Tiller was no
25 longer able to be the only Kansas doctor making

1. the decision. Correct?
- 2 A. Right.
- 3 Q. He needed someone else, another Kansas
- 4 physician?
- 5 A. Correct.
- 6 Q. And if he didn't have that other Kansas
- 7 physician, he could no longer perform late-term
- 8 abortions. Correct?
- 9 A. That's my understanding, yes.
- 10 Q. And you understand that he advertises that he's
- 11 an expert and has expertise in providing
- 12 late-term abortions. Correct?
- 13 A. Yes.
- 14 Q. And he does have expertise in providing
- 15 late-term abortions?
- 16 A. Yes.
- 17 Q. And you agree that he provides late-term
- 18 abortions for people all over the country and
- 19 really all over the world. Correct?
- 20 A. Yes.
- 21 Q. If he did not have a Kansas physician lined up
- 22 to provide the second opinions, that would cut
- 23 into his business; is that correct?
- 24 A. Well, he would have to find somebody, yes.
- 25 Q. Or quit doing the late-term abortions?

- 1 A. Yes.
- 2 Q. So would you agree that it would cut into his
3 business?
- 4 A. Well, in the event that he couldn't find anyone,
5 yes.
- 6 Q. Do you agree that he benefitted from you
7 providing the second opinions?
- 8 A. Yes.
- 9 Q. He charged -- and -- he charged the patients a
10 fee. Correct?
- 11 A. Yes.
- 12 Q. You providing the second opinion allowed him to
13 perform the late-term abortion?
- 14 A. Yes.
- 15 Q. Allowed him to collect the fee?
- 16 A. Yes.
- 17 Q. One thing he could have done was simply to tell
18 the patients I need to have -- you need to go
19 see another physician?
- 20 A. Yes.
- 21 Q. Come to me when you have that second opinion.
22 Correct?
- 23 A. That's theoretically possible, yes.
- 24 Q. It's not theoretically possible. He could have
25 done that. Correct?

- 1 A. Yes.
- 2 Q. There are physician referral centers in Kansas?
- 3 A. Yes.
- 4 Q. He could have said here's a number, call this
5 referral and they can find you an attorney to
6 provide a second opinion and if there's one
7 that's willing to --
- 8 A. A physician, yes.
- 9 Q. I'm sorry. Attorney. Physician. I'm sorry.
10 That's one way that this could have been
11 accomplished. Correct?
- 12 A. Yes.
- 13 Q. But he would have lost control if he'd have done
14 it that way; is that correct?
- 15 A. That's speculation.
- 16 Q. He would not have been able to tell the patient
17 you come in on this date and I'll schedule the
18 appointment?
- 19 A. Timing wise, yes.
- 20 Q. It is possible that his business would suffer if
21 he did it that way?
- 22 A. Possibly.
- 23 Q. He could have given the patients a list of names
24 of doctors to choose from and let them choose
25 which doctor they wanted. Correct?

- 1 A. Possibly, yes.
- 2 Q. He could have called you and said this patient
3 chose you and had you call the patient.
4 Correct?
- 5 A. Yes, that's possible.
- 6 Q. Or if the patient chose another doctor on the
7 list, he could have called that doctor?
- 8 A. Yes.
- 9 Q. But as it was set up, he controlled who the
10 patient saw. Correct?
- 11 A. Well, there were cases when Kansas patients
12 brought their own physician's letters.
- 13 Q. In the normal course on the cases you worked on,
14 he controlled who the patients saw?
- 15 A. Essentially, I guess, yes.
- 16 Q. If it was not for this defendant, you would not
17 see those patients. Correct?
- 18 A. Yes, that's correct.
- 19 Q. And this whole setup allowed the defendant to
20 have a clinic where the women could come in and
21 on the same day get the second opinion and have
22 the -- have the abortion in -- all there at his
23 clinic?
- 24 A. Yes.
- 25 Q. Isn't it true that you consulted with the

1 defendant on the amount you would charge the
2 patients?

3 A. I probably did because I -- it would have had to
4 have been established before I came there, but I
5 didn't actually recall the conversation.

6 Q. Okay. Well, why would it have had to have been
7 established before you came there?

8 A. So that the patients would be aware of it when
9 they arrived. I hadn't considered that until
10 today.

11 Q. When you and Dr. Tiller were talking about the
12 possibility of you doing consulting, one of the
13 things you talked about is how much you could
14 charge the patients?

15 A. Presumably, yes, it must have been.

16 Q. Okay. And that's very different than, say, the
17 cardiologist who come -- came to your clinic.
18 Correct?

19 A. Yes. Well, it's different in the -- right. It
20 wouldn't have been necessary. Right.

21 Q. You would never think of talking to the
22 cardiologist about his fees, would you?

23 A. No. I might notify a patient if they wanted to
24 know it's probably in the range of.

25 Q. Right. But in this case Dr. Tiller wanted you

1 to set an amount that would -- well, strike
2 that. You setting an amount guar -- that he
3 agreed to guaranteed that he would keep
4 referring these patients to you; is that
5 correct?

6 A. I'm speculating about him now. I can set the
7 amount and I did set the amount. I agree to
8 that.

9 Q. Right. I guess the point I'm focussing on is
10 you set the amount in consultation with Dr.
11 Tiller?

12 A. Yes.

13 Q. And in your --

14 A. That's fair.

15 Q. And in your consulting model in Westmoreland,
16 that's completely different than you've ever
17 done?

18 A. Well, that's true.

19 Q. Okay. So tell the jury why you felt it
20 necessary to consult with Dr. Tiller about how
21 much you would charge your patients.

22 A. Well, I don't know if I would call it a
23 consultation. I notify them. It would be more
24 like a notification.

25 Q. Would you agree to consult -- you did talk with

1 Dr. Tiller and you agreed to consult with him,
2 for him. Correct?

3 A. Yes.

4 Q. You and Dr. Tiller agreed on the amount that you
5 would charge?

6 A. Well, he -- he didn't contradict me on it.

7 Q. Okay. You agreed that Dr. Tiller would set up
8 the meeting with the patients and not disclose
9 your name?

10 A. Yes.

11 Q. The defendant agreed to provide you with the
12 string of patients to do the consulting on?

13 A. Well, he didn't put it that way.

14 Q. Well, did he tell you you were only going to do
15 the consulting -- was it your understanding that
16 you were only going to do consulting for one
17 patient one time?

18 A. No.

19 Q. When he called you, you understood that you were
20 entering into an agreement with Dr. Tiller
21 whereby you would charge a certain amount and he
22 would start referring patients to you?

23 A. On a time-by-time basis.

24 Q. On a time-by-time as-needed basis?

25 A. Yes. Yes.

- 1 Q. So when you -- when you stated earlier that you
2 and Dr. Tiller didn't have any agreements, you
3 really did have agreements. Correct?
- 4 A. He asked if I would come down and I said yes. I
5 said I wanted to charge this amount.
- 6 Q. And he said?
- 7 A. So I guess that's an agreement but it's -- it
8 didn't seem to me to be anything -- that's the
9 absolute minimum that could be done and have a
10 communication.
- 11 Q. Well, you said you told him you wanted to charge
12 this amount. What do you mean by that?
- 13 A. Well, that that would be my fee. I would come
14 down and charge that fee.
- 15 Q. You said you wanted to charge this fee. Were
16 you asking him permission on how much you wanted
17 to charge?
- 18 A. No.
- 19 Q. If you charged too much, he could have found
20 someone else. Correct?
- 21 A. Yes, that's true. But I raised my fee and I
22 continued to come.
- 23 Q. By \$50?
- 24 A. Yes.
- 25 Q. Prior to beginning the consultations you met

1 with the defendant's attorney; is that correct?

2 A. I don't think so actually. I may -- I've
3 probably had a phone conversation at some point
4 before -- I must have. I had a phone
5 conversation that I recall before that. I don't
6 actually remember meeting anyone in person
7 before that and -- I just don't remember the
8 details.

9 Q. I want to show you page 212 of your deposition.
10 Actually, starting on line 211 -- page 211,
11 would you just read 211 and 212 to yourself.

12 A. (Witness complied)

13 Q. Have you had time to read that?

14 A. Pretty much.

15 MR. DISNEY: Your Honor, can I just
16 have one second?

17 THE COURT: Yes.

18 BY MR. DISNEY:

19 Q. And I'll also refer you to page 45 of your
20 deposition and lines two through five.

21 A. Uh-huh.

22 Q. Have you had a chance to read that?

23 A. Uh-huh.

24 Q. Having read that, does that refresh your memory
25 on whether you met with the attorney prior to

1 beginning the consultations?

2 A. Well, what I said in there in the first instance

3 was that I wasn't there.

4 Q. Okay.

5 A. So I wouldn't have met with them if I wasn't

6 there.

7 Q. And isn't it correct that on line -- on line

8 seven you said: Correct. I spent some time

9 with her prior to beginning to do these

10 consultations?

11 A. I said that, but that's not probably what

12 happened.

13 Q. Okay.

14 A. Because I had to think about it more later.

15 Q. Okay. You think you just talked to her on the

16 phone?

17 A. I think so, yes.

18 Q. Okay. Now, on page 45 do you recall saying it

19 was a woman and I remember she was pregnant?

20 A. Yes, I do remember that.

21 Q. Okay. Could you tell she was pregnant by

22 talking to her on the phone?

23 A. No. I did meet with her afterwards. I think it

24 was about a year later, because that's when she

25 was pregnant.

- 1 Q. Okay.
- 2 A. We determined that her pregnancies were a year
3 before and a year after this whole thing
4 happened.
- 5 Q. You told the attorney back in December that you
6 met with her prior to the consultations?
- 7 A. I did. And I -- I think I must have misrecalled
8 it, because it was ten years ago.
- 9 Q. Okay. Thank you. In your model of the
10 cardiologist and Westmoreland, did you ever
11 provide a cardiologist with legal advice or
12 attorneys to talk to?
- 13 A. No.
- 14 Q. Did you ever draft or help draft the letter that
15 the cardiologist would write?
- 16 A. No.
- 17 Q. Are you aware of any cardiologist who only
18 consulted for your clinic?
- 19 A. I wouldn't have any way of knowing that.
- 20 Q. Are you --
- 21 A. But probably not, I don't guess.
- 22 Q. Probably not?
- 23 A. I don't know. I don't --
- 24 Q. Are you aware of any cardiologist who relied on
25 your clinic in Westmoreland solely for their

1 patients?

2 A. No.

3 Q. And are you aware of any cardiologist who you

4 would not provide a name to, a patient name to?

5 Are you aware of any cardiologist who you would

6 not tell the patient the name of prior to the

7 cardiologist seeing the patient?

8 A. I don't recall that the patients ever asked, but

9 no.

10 Q. Now, the patients did not always pay you.

11 Correct?

12 A. Pardon me?

13 Q. The patients at Dr. Tiller's clinic did not

14 always pay you. I'm talking about the phone

15 consultations.

16 A. That's correct. I would decide if I didn't want

17 to collect a fee.

18 Q. Well, I'm talking about on the phone

19 consultations.

20 A. Oh. You mean -- can you rephrase that. I'm

21 sorry.

22 Q. Well, when talking with Mr. Monnat I believe you

23 stated that the patients always paid you?

24 A. Yeah.

25 Q. And I was simply pointing out that on phone --

- 1 A. Oh.
- 2 Q. -- consultations, that was different. Correct?
- 3 A. Correct.
- 4 Q. On phone consultations the defendant's staff
- 5 would tell the patients how much it would be?
- 6 A. Yes.
- 7 Q. The defendant's staff would collect the money?
- 8 A. Correct.
- 9 Q. And then they would hold that money in trust for
- 10 you?
- 11 A. Yes.
- 12 Q. It's not unusual to have a Spanish-speaking
- 13 individual come to you for services. Correct?
- 14 A. At Dr. Tiller's that was quite rare.
- 15 Q. I'm sorry?
- 16 A. It was quite rare at Dr. Tiller's.
- 17 Q. How did you handle that if someone spoke
- 18 Spanish?
- 19 A. I have a modicum of ability myself.
- 20 Q. Okay.
- 21 A. But if I wasn't able to communicate then he has
- 22 or had at the time -- I don't know if she's
- 23 still there but has a person who's bilingual.
- 24 Q. And I believe you said on cross examination that
- 25 if he had a Spanish-speaking individual that you

1 would rely upon that bilingual staff member to
2 assist you?

3 A. Yes, that's correct.

4 MR. DISNEY: Your Honor, that's all
5 the questions I have at this time.

6 THE COURT: Recross.

7 MR. MONNAT: Thank you, Your Honor.
8 May it please the Court, ladies and gentlemen of
9 the jury.

10 RECROSS EXAMINATION

11 BY MR. MONNAT:

12 Q. In 2003 how many times do you remember a staff
13 member from Women's Health Care Services needing
14 to help translate a Spanish-speaking patient's
15 statement?

16 A. Maybe once or twice, three times.

17 Q. And how often did that happen that somebody
18 was -- from staff was needed to come and help
19 with a translation?

20 A. Very rarely, because they usually brought a
21 family member or another person who was able to
22 translate.

23 Q. You mean the patient usually brought a family
24 member?

25 A. The patient did, yes.

1 Q. And I know earlier you asked the Kansas attorney
2 general not to get into semantics matters with
3 you, but I wanted to ask you, when the attorney
4 general from the prosecutor's office asked you a
5 few minutes ago whether the patient paid you on
6 a phone consultation, did the patient pay you?

7 A. Yes.

8 Q. Wasn't Dr. Tiller that paid you for the
9 consultation, was it?

10 A. No.

11 Q. So was it fair to say that when you did a
12 consultation with a patient at Women's Health
13 Care Services it was always the patient who paid
14 you?

15 A. Yes, that's fair.

16 Q. It might have had to have been held by a staff
17 member at Women's Health Care Services till the
18 next time you came down, but it was always the
19 patient's money. Am I right?

20 A. Yes, it was.

21 Q. So if that is supposed to show financial
22 affiliation, it's really kind of a gamey
23 semantics to suggest that. Right?

24 A. I would say so.

25 MR. DISNEY: Your Honor, object as to

1 the form of the question.

2 THE COURT: I'll sustain on the form.

3 BY MR. MONNAT:

4 Q. Did you think that you became financially
5 affiliated with Dr. Tiller because sometimes
6 when a patient had an emergency and needed to
7 have a consult over the phone, somebody at the
8 staff at Women's Health Care Center hung onto
9 the cash for a few days?

10 A. I wouldn't say so, no.

11 Q. The prosecutor asked you on how many occasions
12 you saw cardiologists or cardiologists were
13 involved with the clinic in Westmoreland where
14 you couldn't give out their names. Do you
15 remember that?

16 A. Yes.

17 Q. In the history of your medical practice, have
18 you seen a lot of political protests about
19 people who perform heart surgery?

20 A. No. No.

21 Q. And was there a reason why the names and
22 identities and homes of abortion providers and
23 consultants needed to be protected that wasn't
24 true of cardiologists?

25 A. Absolutely.

- 1 Q. The prosecutor asked you if you talked with Dr.
2 Tiller about the amount of money that you would
3 charge the patient for a consult. Do you
4 remember those questions?
- 5 A. Yes.
- 6 Q. Now -- and he asked you about how different that
7 was from the cardiologists that every so often
8 came to do consults at the Westmoreland rural
9 clinic. Correct?
- 10 A. Yes.
- 11 Q. Now, when cardiologists came to do consults at
12 the Westmoreland rural clinic, mainly the
13 patient's charge from the cardiologist was paid
14 by the patient's health insurance, wasn't it?
- 15 A. Yes.
- 16 Q. Now, in the United States it's pretty rare to
17 have an abortion ever paid for by insurance,
18 particularly a late-term one. Correct?
- 19 A. Extremely rare.
- 20 Q. And you wouldn't expect that when a patient was
21 coming to Women's Health Care Services for a
22 consultation with you that there would be
23 insurance coverage of the patient that would pay
24 your consultation fee, would you?
- 25 A. No.

- 1 Q. So that would be a completely different
2 situation than the consultation provided by the
3 cardiologist who could be paid by insurance.
4 Right?
- 5 A. Yes.
- 6 Q. So the patient is going to travel from another
7 country or another state to Women's Health Care
8 Services and, if nobody tells the patient about
9 it, the patient is going to come to Women's
10 Health Care Services with no insurance and no
11 cash to pay for the consultation that has to be
12 done; is that right?
- 13 A. That's right.
- 14 Q. So what was the reason that you and Dr. Tiller
15 discussed how much you might charge for a
16 consultation?
- 17 A. For all the reasons you just elucidated, that --
- 18 Q. And -- go ahead.
- 19 A. That they wouldn't have any other coverage or
20 ability to know what to prepare for.
- 21 Q. Was it some kind of price-fixing scheme between
22 you and Dr. Tiller?
- 23 A. No.
- 24 Q. It was just as a humanitarian courtesy to the
25 patient who was going to come all this way and

1 needed to know how they had to pay the
2 consultation fee required by law?

3 A. That's right.

4 Q. The prosecutor asked you a bunch of things that
5 might be possible. Right?

6 A. Yes.

7 Q. And you tried very forthrightly to acknowledge
8 that many things are possible?

9 A. Yes.

10 Q. I want to ask you some common-sense questions
11 about practicality.

12 A. Okay.

13 Q. If a patient in 1999 through 2003 from another
14 country or state contacted an abortion provider
15 in Kansas and was told about the referral
16 required by law, could the abortion provider
17 practically give the patient from another
18 country or another state a long list of names
19 that the patient could call up to consult?

20 A. No.

21 Q. And would you just share with the ladies and
22 gentlemen of the jury why that was so.

23 A. Well, can you imagine someone calling from New
24 Jersey or France and just calling out of the
25 blue and making that request. It would be quite

1 intimidating, I think, and the odds are that 99
2 out of 100 physicians that they called would
3 just think it was some kind of crank phone call
4 or say, I'm sorry, we can't help you, you'll
5 just need to call somebody else.

6 Q. Well, based on your experience and knowledge and
7 association with your colleagues, how many
8 physicians between 1999 and 2003 were willing to
9 provide consultation on abortions in Kansas?

10 A. I'd have to say I'd be speculating. I'd rather
11 not answer.

12 Q. Do you think there were a lot?

13 A. I doubt it.

14 Q. And you told us earlier that very few physicians
15 were willing to endure the protests and
16 publicity and threats and bombings and murders
17 generated by anti-choice groups. Correct?

18 A. Especially with this particular practice.

19 Q. So if between 1999 and 2003 you had been asked
20 to provide a long list of physicians who would
21 be willing to do consults on abortions, based on
22 your knowledge, would that list have been very
23 long?

24 A. No. In fact, I asked several friends and none
25 of them were interested.

1 Q. All right. So if a patient between 1999 and
2 2004, let's say, calls from another country or
3 another state to an abortion provider in Kansas
4 and says, hey, give me a list of physicians that
5 I can go to for a second opinion, most abortion
6 providers would say I don't have a list?

7 A. That's probably right.

8 Q. Plus, the abortion provider would be very
9 hesitant to provide a list to that cold caller
10 who may, in fact, be an abortion protester
11 wanting to cause harm to those consultants.
12 Correct?

13 A. You could be certain that at least some would be
14 in that category, yes.

15 MR. MONNAT: May I have just a moment,
16 Your Honor?

17 THE COURT: Yes.

18 BY MR. MONNAT:

19 Q. Several times the prosecutor from the Kansas
20 Attorney General's Office asked you about the
21 law changing in 1999?

22 A. Yes.

23 Q. Or, actually, having changed in '98 or '99.
24 Correct?

25 A. It seemed -- I remember hearing about it before

1 1999. I think it was --

2 Q. Okay.

3 A. -- it was in 1998.

4 Q. I want to just look at the screen for a second
5 at the law before the July 1st, 1998 amendment.
6 Do you see that the law before July 1st of 1998
7 required a documented referral from another
8 physician not financially associated?

9 A. Yes, I see that.

10 Q. Now, do you see the word Kansas in there, that
11 it required a referral from a Kansas physician?

12 A. No.

13 Q. All right. Let's look at the law after July 1st
14 of 1998. Now, after July 1st of 1998 the law
15 didn't change to require a documented referral
16 from a second Kansas physician, did it? It
17 still says a documented referral from another
18 physician. Am I right?

19 A. Yes.

20 Q. So, actually, when the prosecutor from the
21 Kansas Attorney General's Office keeps saying
22 the law changed to require a second Kansas
23 physician, is it more accurate to say that the
24 law as interpreted by the Kansas Board of
25 Healing Arts changed because the Kansas Board of

1 Healing Arts changed their interpretation of the
2 words another physician to mean, for the first
3 time, a Kansas physician?

4 A. Yes.

5 Q. Thank you. And in your medical practice, did
6 the interpretations of the law as announced by
7 the Kansas Board of Healing Arts hold any
8 importance?

9 A. Yes.

10 Q. And that's because it was the Kansas Board of
11 Healing Arts who issued your medical license.
12 Correct?

13 A. That's right.

14 Q. And had the power to revoke it. Correct?

15 A. Yes.

16 Q. So did you regard the Kansas Board of Healing
17 Arts as an authoritative body as far as
18 interpreting the laws that applied to the
19 practice of medicine?

20 A. Yes, absolutely.

21 Q. And did you regard the head, the executive
22 director of the Kansas Board of Healing Arts,
23 Larry Buening, as someone authorized to
24 authoritatively interpret the laws of Kansas as
25 they applied to the practice of medicine?

1 A. Yes.

2 Q. Now, the prosecutor asked you about the rural
3 clinic in Westmoreland, Kansas and how a
4 cardiologist or an orthopedist would be called
5 in to the clinic to provide a second opinion,
6 but that was because the cardiologist or the
7 orthopedist had expertise different than yours.
8 Right?

9 A. That's right.

10 Q. And the prosecutor from the Kansas Attorney
11 General's Office suggested to you that your
12 situation with Dr. Tiller was different because
13 you were both abortion providers and didn't have
14 any expertise that he didn't have. Do you
15 remember those questions?

16 A. Yes, I do.

17 Q. But, actually, the reason that you were called
18 in to do a consultation on Dr. Tiller's patients
19 is because the law required another consultation
20 for a patient seeking an abortion?

21 A. Yes.

22 Q. As interpreted by the Kansas Board of Healing
23 Arts?

24 A. That's right.

25 Q. All right. So it is a little different

1 situation. One is just because somebody has a
2 little different expertise. This one is
3 actually required by law. Right?

4 A. That's right.

5 Q. And, actually, the statute itself requires some
6 kind of affiliation between two Kansas doctors,
7 doesn't it?

8 MR. DISNEY: Your Honor, I'd object as
9 calling for a legal conclusion of this witness.

10 A. I have a hard time answering that.

11 THE COURT: I'll sustain.

12 BY MR. MONNAT:

13 Q. Well, let me ask you, the law says that a
14 physician doing a later-term abortion has to
15 have a documented referral from another
16 physician. Right?

17 A. Yes.

18 Q. And as interpreted by the Kansas Board of
19 Healing Arts, the law requires a documented
20 referral from another Kansas physician. Right?

21 A. Yes.

22 Q. In order to have a referral that is documented,
23 there has to be some communication between the
24 two physicians. Right?

25 A. Yes. Yes.

1 Q. And so there has to be some kind of association
2 between the two doctors. Right?

3 MR. DISNEY: Your Honor, I'm going to
4 object.

5 A. Yes.

6 MR. DISNEY: This is just argument. I
7 mean, he's just arguing, doing his closing
8 argument.

9 MR. MONNAT: It's no different than --

10 MR. DISNEY: I'm sorry. I have an
11 objection. This is just argument.

12 MR. MONNAT: May I respond, Your
13 Honor?

14 THE COURT: Yes.

15 MR. MONNAT: He's asking about why two
16 physicians associate or affiliate in the
17 cardiological context. I'm merely following up
18 on what he asked in the context that's relevant
19 to this case.

20 THE COURT: Well, as long as you avoid
21 asking the witness to draw any legal
22 conclusions.

23 MR. MONNAT: Okay.

24 BY MR. MONNAT:

25 Q. So the law itself, as interpreted by the Board

1 of Healing Arts in 1999, required some kind of
2 communication --

3 A. Yes.

4 Q. -- between two physicians?

5 A. (Witness nodding head.)

6 Q. Required some kind of association between the
7 two physicians?

8 MR. DISNEY: Your Honor, calls for a
9 legal conclusion.

10 MR. MONNAT: Not according to Your
11 Honor's opinion on the motion to dismiss.

12 MR. DISNEY: Your Honor, that's
13 improper.

14 THE COURT: I'll -- I'm going to
15 sustain the objection as calling for a legal
16 conclusion.

17 BY MR. MONNAT:

18 Q. The law, as interpreted by the Board of Healing
19 Arts, required one doctor to refer the patient
20 to another doctor. Right?

21 A. Yes.

22 Q. The prosecutor asked you on cross examination
23 about the fact that short-term Attorney General
24 Paul Morrison seemed to be a pro-choice attorney
25 general. You remember those questions?

1 A. Yes.

2 Q. Did you ultimately learn that Paul Morrison,
3 before he was attorney general and while he was
4 attorney general, was having an affair with a
5 lover who worked for Phill Kline?

6 A. Yes, I did.

7 MR. DISNEY: Your Honor, what's the
8 relevancy of that?

9 MR. MONNAT: He's the one that talked
10 about it being political.

11 MR. DISNEY: She's the one that talked
12 about political. I asked do you know his views
13 on abortion.

14 THE COURT: I'm going to sustain the
15 objection.

16 BY MR. MONNAT:

17 Q. Did it appear to you after short-term Attorney
18 General Paul Morrison got in office that he had
19 some political pressures on him that you would
20 not have anticipated from his election campaign?

21 MR. DISNEY: Your Honor, object as to
22 relevancy.

23 THE COURT: I'll sustain.

24 BY MR. MONNAT:

25 Q. The prosecutor asked you what you knew about

1 Attorney General Stephen Six, and he asked you
2 if Stephen Six could have ordered this
3 prosecution dismissed. Do you remember that?

4 A. Yes, I do.

5 Q. And would you agree that it would be awful hard
6 for Attorney General Stephen Six to order this
7 prosecution dismissed if he wanted to run again
8 for reelection or for other political offices?

9 MR. DISNEY: Your Honor, again, calls
10 for speculation on this.

11 THE COURT: I'm going to allow the
12 question. Since you had asked her the question
13 initially, I'll allow it.

14 A. Well, as a potential voter, I would think that
15 that would be quite relevant.

16 BY MR. MONNAT:

17 Q. And did you -- and you would agree that it would
18 be awful difficult for Attorney General Six to
19 dismiss the charges designed by Kline, filed by
20 Morrison and pursued by Six if he had the same
21 kinds of political pressures on him as his two
22 predecessors?

23 A. Yes.

24 Q. You told the prosecutor in response to his
25 question that you think these are political

1 charges. Would you please explain to the ladies
2 and gentlemen of the jury why you think they
3 are.

4 A. Well, first of all, the law itself was crafted
5 by Phill Kline, as I understood it, and then he
6 contrived to have himself elected as the person
7 who would then be in a position to carry out his
8 prime piece of legislation, so that's what he
9 did from the day he got in the door. He spent
10 his entire time doing that and dismantling a lot
11 of the other functions of the AG's office.
12 Everything was in a huge wreck by the time he
13 left, so everybody was extremely relieved when
14 Mr. Morrison took over and hoped that things
15 would kind of get back to normal and on a
16 professional footing. And, unfortunately, the
17 saga seemed to continue because of the
18 relationship that Mr. Morrison had with his
19 employee and the fact that she was still working
20 for Mr. Kline, and when that was discovered then
21 Mr. Kline apparently put her under some type of
22 deposition where she had to admit that she was
23 having an affair and that she was putting
24 pressure on Dr. Tiller to file charges -- I mean
25 putting pressure on her lover, Paul Morrison, to

1 file charges against Dr. Tiller and there was
2 this ongoing battle between the two of them over
3 that issue. That was my understanding, based on
4 reading the article in the Topeka
5 Capital-Journal.

6 Q. At any time have you been legally or financially
7 affiliated with Dr. Tiller?

8 MR. DISNEY: Your Honor, calls for a
9 legal conclusion.

10 THE COURT: I'm going to allow her to
11 answer the question.

12 A. No. I made all efforts to avoid that.

13 BY MR. MONNAT:

14 Q. At any time has Dr. Tiller been legally or
15 financially affiliated with you?

16 A. Not -- not to my -- not from my opinion or
17 perspective, no.

18 Q. And it's your opinion, as you told the
19 prosecutor from the Attorney General's Office,
20 that the reason these charges were filed is
21 purely political?

22 A. Yes, it is.

23 MR. MONNAT: Thank you, Dr. Neuhaus.
24 I don't have any further questions.

25 REDIRECT EXAMINATION

1 BY MR. DISNEY:

2 Q. Dr. Neuhaus, in arriving at your views that this
3 is a political prosecution, did you consider the
4 fact that perhaps Kansans do not like late-term
5 abortions and that's why the law was passed?

6 Did you consider that?

7 A. Yes, I did.

8 Q. Did you consider the fact that Kansans recognize
9 the rights of the fetus after viability is
10 reached and are concerned about the rights of
11 that viability -- of that fetus?

12 MR. MONNAT: That's a misstatement of
13 the law, Your Honor.

14 MR. DISNEY: I'm asking if she
15 considered it. She either did or she didn't.

16 THE COURT: I'll allow the question.

17 BY MR. DISNEY:

18 Q. Did you consider that?

19 A. Can you repeat it. I'm sorry.

20 Q. Did you consider whether the law was passed
21 because it concerns the abortion of a fetus that
22 has been determined to be viable and that
23 Kansans in adopting the law were concerned about
24 the rights of that fetus?

25 MR. MONNAT: Same objection.

1 Misstates the law as to the rights of the fetus.

2 MR. DISNEY: I'm just asking her if
3 she's aware -- if she considered that.

4 THE COURT: I think you need to reword
5 it slightly to conform with the actual law.

6 BY MR. DISNEY:

7 Q. Do you understand that the law we're dealing
8 with only applies in late-term abortions?

9 A. Yes.

10 Q. Only applies when the fetus has been determined
11 to be viable?

12 A. Yes.

13 Q. You believe that this is a political-
14 prosecution. Correct?

15 A. Yes.

16 Q. Did you consider the possibility that part of
17 the motive on the people who are bringing the
18 prosecution is that they are concerned with the
19 rights of the fetus?

20 MR. MONNAT: Same objection, Your
21 Honor. Misstates the rights of the fetus.

22 THE COURT: Okay. We perhaps need to
23 have a bench conference to explain the ruling.

24 (Conference at the bench between Court
25 and counsel, out of the hearing of

1 the jury.)

2 THE COURT: I think the law actually
3 is that the public has an interest in the
4 potential life of the fetus. It's not actually
5 the way that you worded it. It's the potential
6 of life of the fetus rather than the fetus
7 having any rights.

8 MR. MONNAT: I object to the words.
9 The prosecutor on his own wasn't asking the
10 right question, and I would just ask it be
11 sustained.

12 THE COURT: Well, I could -- the
13 problem is we could sit here and keep going over
14 and over it. I know there's a Kansas case that
15 says if the parties have any problems in knowing
16 what the foundation of the ruling is that the
17 Court's obligation is to explain the reason for
18 the ruling. It's that limited point. Other
19 than that, I don't have a problem with the
20 question, but I think you're correct that he was
21 making a misstatement.

22 MR. DISNEY: Would you repeat it.

23 THE COURT: It's that the public has
24 an interest in the potential life of the fetus
25 rather than the fetus having the rights.

1 (The following proceedings continued
2 in the hearing of the jury.)

3 BY MR. DISNEY:

4 Q. In arriving at your opinion that this is a
5 political prosecution, did you consider that the
6 public has an interest in the potential life of
7 the fetus?

8 A. Yes.

9 Q. Did you consider the possibility that the public
10 is concerned with the relationship between you
11 and Dr. Tiller?

12 A. Only because of all this hullabaloo.

13 Q. Do you believe that's the only reason that it's
14 brought?

15 A. I do.

16 Q. Do you believe that -- in arriving at your
17 opinion that this is a public -- I'm sorry --
18 that this is a political prosecution, do you
19 discount the fact that Dr. Tiller recruited you?

20 A. He would have had to recruit somebody because of
21 the requirements of the law so --

22 Q. Or --

23 A. I don't think it's specific to us.

24 Q. -- Dr. Tiller could have had a patient call his
25 clinic and he could have simply said there's not

1 a lot of people in Kansas, a lot of physicians
2 in Kansas who'll provide second opinions but
3 there are a few and here are their names?

4 A. Well, how would he know their names if he hadn't
5 recruited them already?

6 Q. Well, you said, you told us yesterday that there
7 was about five doctors in Kansas that provide
8 abortions. Right?

9 A. Right.

10 Q. That it's a close-knit fraternity. Right?

11 A. Right.

12 Q. So wouldn't he have known the doctors?

13 A. ~~I assume~~ --- yeah, I'm sure he would have.

14 Q. Do you think when he asked you to come take a
15 tour of his clinic and the first time he met you
16 that he knew who you were?

17 A. Yes. But that was long before this law. It was
18 like a year or two before.

19 Q. You're not telling this jury that you and him
20 are the only doctors that would provide second
21 opinions in Kansas, are you?

22 A. No, I'm not.

23 Q. There's other doctors?

24 A. Yes, probably.

25 Q. And he could have provided the patients with a

1 list of those names. Correct?

2 A. I guess so.

3 Q. Or he could have said, patient, here are the
4 names, you pick one of them, doesn't matter to
5 me, I'll call them and have them call you?

6 A. It's theoretically possible, if there were some
7 that were willing to do it.

8 Q. Well, I'm talking about of the ones that are
9 willing to do it, he could have given the
10 patients the list of names and let them pick?

11 MR. MONNAT: Object as to the
12 uncertainty of the time frame in the question.

13 ~~BY MR. DISNEY:~~

14 Q. In 2003.

15 A. I guess it's possible.

16 Q. But as it is, did you consider, in arriving at
17 your opinion that this is a political
18 prosecution, that he has set up a situation
19 where he controls who gives the second opinion
20 rather than letting the patient decide?

21 A. The patient was always free to decide.

22 Q. Well, okay. They're free to decide. Tell me in
23 Dr. Tiller's situation that he has set up with
24 you how the patient has any control over who
25 gives the second opinion.

- 1 A. Because they could have at any point said, well,
2 I have physician Jane Doe and I'll go see her.
- 3 Q. So a physician from Japan who calls in --
- 4 A. No, not an out of state.
- 5 Q. Or from -- not an out of state?
- 6 A. Unless they had family here or something, no.
- 7 Q. The majority of his late-term abortions are from
8 out of state?
- 9 A. Right.
- 10 Q. So how does that person have any control over
11 who does the second opinion under the way he has
12 it set up?
- 13 A. They aren't required to use his consultants.
14 They could still look on Google, frankly, if
15 they wanted to.
- 16 Q. So then why is he providing them with you?
- 17 A. For the --
- 18 Q. Why don't they just do that to begin with?
- 19 A. -- convenience of the patient.
- 20 Q. Or so he could continue doing business as
21 advertised?
- 22 A. I'm sure he would have figured something out if
23 I didn't come. There would have been somebody
24 else, just like there is now.
- 25 Q. But he recruited you?

1 A. No different than I recruited the cardiologist
2 to come to my clinic.

3 Q. Doctor, in arriving at your opinion that this
4 was a political prosecution, did you consider
5 the fact that he could have simply let -- given
6 the patient the list of names and let them
7 decide who they wanted to see? Did you consider
8 that?

9 A. Well, back in 1999 --

10 Q. Did you consider that?

11 A. I couldn't have. I didn't even know Phill Kline
12 would be the AG in 1999. How could I know?

13 Q. So the answer would be what?

14 A. That impossible to know. I didn't have a
15 crystal ball.

16 Q. So the answer would be no?

17 A. I can't remember --

18 Q. You did not consider it?

19 A. I did not consider at the time that we would
20 have a rabid fanatically anti-choice AG.

21 Q. In arriving at your opinion that this is a
22 political prosecution, did you consider the fact
23 that Dr. Tiller could have given the patients a
24 list of doctors and let them choose which doctor
25 of those who would give second opinions, let

1 | them make the choice? Did you consider that?

2 | A. I honestly --

3 | Q. You either considered it or --

4 | A. I don't remember. I don't remember. It's ten

5 | years ago. I might have.

6 | Q. Well, you just gave your opinion --

7 | A. I would say I don't remember doing that.

8 | Q. Okay. Well, Doctor, you just gave your opinion

9 | ten minutes ago that this was a political

10 | prosecution.

11 | A. Yes. But this was in 2003, not in 1999.

12 | Q. Okay. Just listen to my question. Ten minutes

13 | ago when you arrived at your opinion or stated

14 | your opinion that this was a political

15 | prosecution --

16 | A. Right.

17 | Q. -- did you consider the fact that Dr. Tiller

18 | could have provided a list of physicians who

19 | were willing to give second opinions to the

20 | patients and let the patient choose the doctor?

21 | A. Did you --

22 | Q. You either considered it or you didn't.

23 | A. The question is so illogical, I don't even know

24 | where to start.

25 | Q. Just say yes, ma'am, or no.

- 1 A. It's an illogical question. You asked me if I
2 considered in 2003 that he could have done
3 something else in 1999, and I can't say that.
- 4 Q. Okay. So you didn't consider it?
- 5 A. It's impossible. It's a ridiculous question.
6 I'm sorry.
- 7 Q. I'm -- that's fine. The only thing that you
8 were concerned about is that these women -- in
9 2003 your only concern is that these women be
10 provided late-term abortions; is that correct?
- 11 A. That they have access to needed medical care.
- 12 Q. And the fact that the Kansas law made that more
13 difficult was something you disagree with?
- 14 A. I felt that it was unconstitutional. Even
15 though obviously I have no legal expertise, my
16 reading of that was that it was
17 unconstitutional, and I was willing to
18 participate in a process that would allow them
19 to have medical care that they might need.
- 20 Q. Even if that violated the law?
- 21 A. I didn't think that it did violate the law.

22 MR. DISNEY: Your Honor, I have no
23 other questions.

24 THE COURT: Any further cross?

25 RECROSS EXAMINATION

1 BY MR. MONNAT:

2 Q. In fact, it was your attempt to do everything
3 you could do to comply with the law that you
4 thought was unconstitutional?

5 A. Right. I didn't presume to make that
6 determination, but that was the understanding
7 that I received from consulting with my father
8 and apparently with Rachel Pirner.

9 Q. Right. Now, the prosecutor asked you a number
10 of things and whether you considered them in
11 arriving at your opinion that this was a
12 political prosecution. Let me ask you, in
13 arriving at your opinion that this was a
14 political prosecution, did you consider that the
15 prosecution from the Attorney General's Office
16 might try to prove that you and Dr. Tiller were
17 financially affiliated because someone at
18 Women's Health Care Services held the patients'
19 cash for you for a few days?

20 A. No, I did not.

21 Q. When you arrived at your opinion that this was a
22 political prosecution, did you consider that the
23 Attorney General's Office, prosecutor, would be
24 contending that you were legally or financially
25 affiliated with Dr. Tiller because six years

1 after -- excuse me -- three years after the
2 charges in this case you bought a \$300 old
3 clunker from Dr. Tiller?

4 A. No.

5 Q. In arriving at your opinion that this was a
6 political prosecution, did it ever occur to you
7 that somebody might try to prove that you and
8 Dr. Tiller were legally or financially
9 affiliated in 2003 because, as a nice person, in
10 2009 you gave a hug to Dr. Tiller?

11 A. No. No.

12 MR. MONNAT: I don't have any further
13 questions, Your Honor. Thank you.

14 MR. DISNEY: Nor do I.

15 THE COURT: Okay. You may step down
16 then.

17 MR. FOCHT: Your Honor, may she be
18 excused from further attendance by the Court?
19 She has a child that's here that's not doing
20 very well.

21 MR. DISNEY: No objection.

22 THE COURT: Any objection?

23 MR. MONNAT: May I confer with counsel
24 for just a second. Then I have no objection,
25 Your Honor. I think arrangements have been

1 made.

2 THE COURT: Very well. She's
3 released. Let's go ahead and take our afternoon
4 break right now.

5 (Thereupon, the afternoon recess was
6 taken.)

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C E R T I F I C A T E

SIGNED, OFFICIALLY SEALED, and DELIVERED this
24th day of March, 2009.

Sharon M. Williams, CSR, RPR
CSR # 1413

SHARON WILLIAMS, CSR, RPR