

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 07-10234-MLB
	)	
STEPHEN J. SCHNEIDER,	)	
and	)	
LINDA K. SCHNEIDER, a/k/a	)	
LINDA K. ATTERBURY,	)	
d/b/a SCHNEIDER MEDICAL CLINIC,	)	
	)	
Defendants.	)	
_____	)	

**GOVERNMENT’S RESPONSE IN OPPOSITION TO DEFENDANTS’  
JOINT MOTION TO STRIKE SURPLUSAGE**

The United States of America, by and through Assistant United States Attorney Tanya J. Treadway, hereby submits its Response in Opposition to Defendants’ Joint Motion to Strike Surplusage (Doc. 101). Because all of the Indictment’s allegations will be proved at trial and are relevant to proving that the defendants are guilty of conspiracy, distribution of controlled substances, a scheme to defraud, and money laundering, the Court should not strike any language from the Indictment.

**DISCUSSION**

The defendants seek to strike relevant language from the indictment that explains how they perpetrated their crimes, puts their activities in context, and evidences their knowledge and intent, which are always disputed elements of the crimes charged. The Court has discretion to strike surplusage in an indictment,<sup>1</sup> but

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<sup>1</sup> See United States v. Collins, 920 F.2d 619, 631 (10th Cir.1990).

should do so only if the disputed allegations are clearly not relevant to the charge and are inflammatory and prejudicial.<sup>2</sup> In the D.C. Circuit, Judge Lamberth noted that motions to strike surplusage from an indictment are highly disfavored.<sup>3</sup> Citing to opinions from various other districts, including this Court's opinion in United States v. Marker,<sup>4</sup> Judge Lamberth emphasized that the "District of Columbia is not alone in this regard."<sup>5</sup> "Courts strike language only if it is both clearly irrelevant to the charges and inflammatory or prejudicial to the defendant. . . . This is an exacting standard that is rarely met."<sup>6</sup> "If the language is information which the government hopes to properly prove at trial, it cannot be considered surplusage no matter how prejudicial it may be."<sup>7</sup>

Background information is particularly useful in cases involving fraud and false statements for the purpose of giving the jury information concerning the context of the fraud and false statements. As Judge Greene reasoned in United States v. Poindexter, "it would be difficult, if not impossible for the jury to understand defendant's allegedly false statements and obstruction without [such] background."<sup>8</sup>

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<sup>2</sup> See id.

<sup>3</sup> See United States v. Watt, 911 F. Supp. 538, 554 (D. D.C.1995).

<sup>4</sup> 1994 WL 192018 at \*8 (D. Kan.1994).

<sup>5</sup> Id.

<sup>6</sup> United States v. Jackson, 850 F. Supp. 1481, 1506 (D. Kan.1994).

<sup>7</sup> Id. at 1507 (citations omitted); see also, United States v. Bullock, 451 F.2d 884, 888 (5<sup>th</sup> Cir. 1971) (The level of proof required to strike surplusage is "exacting.").

<sup>8</sup> United States v. Poindexter, 725 F. Supp. 13, 37 (D. D.C. 1989); see also, United States v. Langella, 776 F.2d 1078, 1081 (2d Cir.1985) (holding that "background paragraphs were relevant to the obstruction of justice count, and that refusal to strike them was therefore proper").

What the defendants complain of as surplusage is background and informational paragraphs intended to put their conduct in context, as well as evidentiary detail regarding their crimes. The offenses charged – conspiracy, drug distribution, fraud, and money laundering -- suggest that the inclusion of extended background paragraphs in the indictment -- all of which the government will prove at trial -- is neither prejudicial nor improper.

The defendants want to strike the Clinic's name from the caption, certain language from Paragraphs 1, 4, 7, 32, 119, and 124, and Paragraphs 9-11, 22-24, 38, 41, 42, 62, 70, 77, 81 in their entirety. They also seek to strike Attachment 1, which lists in chronological order the individuals who died of accidental overdoses from prescriptions they received from providers at Schneider Medical Clinic. With the exception of Paragraph 1, the contents of these paragraphs are clearly relevant on their face, as they describe the crimes with which the defendants are charged, and specifically set forth evidence the government will introduce to prove those crimes. Nevertheless, the government briefly describes each allegation the defendants seek to strike and its relevance:

**Caption:** As alleged, and as will be proved at trial, the defendants perpetrated their crimes through the Schneider Medical Clinic, which they owned and operated and through which they did business. The Caption is neither prejudicial, nor inflammatory, and reflects how the Grand Jury understood the relationship between the two individual defendants and their Clinic.

**Paragraph 1:** The defendants complain about the second sentence: “Prior to becoming a doctor, he was a butcher.” The defendants do not dispute this statement, because it is a fact. This language was included in the indictment not to insult the defendants, but because it was defendant Stephen Schneider’s reference to himself as a butcher to his colleagues and patients that served, in part, as the genesis for Schneider Medical Center and as his way of convincing medical professionals to join him. Defendant Stephen Schneider told people that prior to becoming a doctor, he had been a butcher – an ordinary person – and that he therefore wanted to open a clinic to care for other ordinary, common, every day hard working people of Haysville. Defendant Stephen Schneider included in his dream of a one-stop-shopping Clinic a desire to care for those blue-collar workers suffering from chronic low back pain. By sharing this dream, he convinced medical professionals not only to join him at the Clinic, but also to stay despite their better judgment to leave. Thus, this comment is a part of the background of how the Clinic was formed and will explain, in part, why medical professionals both joined the Clinic and stayed.

**Paragraphs 4, 32:** The defendants complain about the “Pill Mill” and “narcotics delivery system” references in these paragraphs. **Paragraph 4** reads as follows:

From at least in or about January 2002, and continuing to on or about the return of this Indictment, defendants **STEPHEN J. SCHNEIDER** and **LINDA K. SCHNEIDER** purported to be providing “Pain Management” treatment for chronic pain patients through family medical practices, including the Clinic. Defendants **STEPHEN J. SCHNEIDER** and **LINDA K. SCHNEIDER** did not operate a legitimate medical practice, but instead were engaged in a conspiracy and scheme to distribute and dispense controlled substances illegally, to defraud Health Care Benefit Programs of money,

and to defraud patients of money and their intangible rights to honest services by running what was, in essence, a “Pill Mill” and a “narcotics delivery system.”

**Paragraph 32** states:

During the course and in furtherance of the conspiracy and scheme, defendants **STEPHEN J. SCHNEIDER** and **LINDA K. SCHNEIDER** ran what was, in essence, a “Pill Mill” and a “narcotics delivery system,” which involved: . . .

As to both of these paragraphs, the terms are in quotation marks because they are terms that the government’s experts used to describe the Clinic the defendants operated, and they are terms these experts will use at trial. The government will prove that the defendants did not run a legitimate medical practice, but in fact, ran a pill mill and a narcotics delivery system, which will be relevant to both the drug distribution and health care fraud charges.<sup>9</sup>

**Paragraph 7:** Defendants complain about the references to Ulises Eric Taylor.

**Paragraph 7** reads as follows:

Defendant **LINDA K. SCHNEIDER** hired a number of family members and family friends at the Clinic, including a Physician’s Assistant who is her brother, and the Clinic Administrator, who is a family friend. Additionally, defendant **LINDA K. SCHNEIDER** hired an illegal Mexican alien, Ulises Eric Taylor, as her second-in-command at the Clinic, after helping him fraudulently apply for a social security number by falsely representing to the Social Security Administration that he was her adopted son from Romania. Mr. Taylor, who had no medical training, was involved with all aspects of the Clinic, as was defendant **LINDA K. SCHNEIDER**.

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<sup>9</sup> See United States v. Varma, 691 F.2d 460, 464 (10<sup>th</sup> Cir. 1982) (“Defendant’s medical practice was largely a prescription writing business.”).

Mr. Taylor's illegal alien status, as well as his involvement in the Clinic's medical affairs will be discussed by several witnesses, and, as the witnesses will testify, evidences the fact that the defendants had non-medically trained individuals at the Clinic involved in medical decisions, as well as billing decisions, undercutting their claim that the Clinic was operated in a legitimate manner. Furthermore, defendant Linda Schneider's prior conviction for social security fraud may be independently admissible under Rule 404(b), or as impeachment under Rules 608 and 609.

**Paragraphs 119, 124:** Defendants ask the Court to strike the amounts of money the government claims the defendants defrauded from the health care benefit programs. Although the government agrees that it not need prove an amount of loss to sustain its health care fraud charges, the amount of loss to the programs is relevant as it tends to show the defendants' motive – financial gain, a relevant issue, as defendants' must concede.<sup>10</sup> This evidence will be offered at trial and is clearly relevant to help prove defendants' knowledge and intent.

**Paragraphs 9-10:** The defendants ask the Court to strike these paragraphs, but then offer no explanation or argument. These paragraphs state as follows:

9. Defendant **STEPHEN J. SCHNEIDER** has denied under oath that he is a Pain Management specialist.
10. Defendant **STEPHEN J. SCHNEIDER** was known in Sedgwick County and elsewhere to be a physician who liberally prescribed drugs on request, and was referred to as "Schneider the Writer," "the pill man," and "the candy man." In his Application for Credentialing with the American Academy of Pain Management, defendant **STEPHEN J. SCHNEIDER** stated: "I am one of the leading writers for narcotics in the State of Kansas."

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<sup>10</sup> See Doc. 101 at p. 8.

The fact that the defendant has made statements indicating on the one hand that he is not a Pain Management specialist, and then on the other hand that he is one of the state's leading writers of narcotics prescriptions is obviously relevant to his knowledge and intent. Again, the government intends to offer this evidence at trial, including the fact that the defendants knew that patients referred to defendant Stephen Schneider as described, evidencing the defendants' knowledge that people sought appointments at the Clinic, knowing they could receive controlled substances prescriptions with no meaningful scrutiny as to medical need.

**Paragraphs 41 and 42:** It is unclear what, exactly, the defendants want to strike from these paragraphs as surplusage, or why, other than their claim that the allegations are not elements of any crime and do not state, in and of themselves, a criminal violation. But, these paragraphs, on their face, are clearly relevant because they relate to the manner and means of the defendants' conspiracy, that is, how they furthered their conspiracy and scheme. These Paragraphs read as follows:

41. During the course and in furtherance of the conspiracy and scheme, the defendants **STEPHEN J. SCHNEIDER** and **LINDA K. SCHNEIDER** operated the Clinic to maximize billing opportunities. For example:
  - (a) Patients were scheduled every 10 minutes.
  - (b) Non-emergency walk-in patients were "worked in" to the schedule in addition to scheduled patients.
  - (c) Providers who spent too much time with patients were encouraged to speed up the visits with knocks on the examination room doors, and/or defendant **LINDA K. SCHNEIDER** pacing outside the examination rooms and admonishing slow providers to pick up the pace. Defendant **LINDA K. SCHNEIDER** praised those providers who saw large numbers of patients and encouraged others to follow their example.

- (d) Clinic providers often saw more than one patient at a time, and sometimes saw a whole family of patients simultaneously in a single examination room.
- (e) Defendant **LINDA K. SCHNEIDER** often prioritized which patients would be seen by the type of insurance the patients had. As a result of this prioritization practice, and the practice of seeing walk-ins, some patients waited as many as 3 to 4 hours for rushed visits lasting only long enough for a provider to write a prescription.
- (f) Defendant **STEPHEN J. SCHNEIDER** and others prescribed controlled drugs and other drugs at such dosage frequencies, in such amounts, and in such combinations, as were likely to cause and that did cause patients to become dependent on those drugs, and to become dependent on the Clinic for providing prescriptions for those drugs, necessitating the patients' return visits to the Clinic for ostensible "office visits" to obtain the prescriptions.
- (g) Defendants **STEPHEN J. SCHNEIDER** and **LINDA K. SCHNEIDER** required Pain Management patients to: (1) return to the Clinic at least monthly for office visits; (2) schedule office visits to obtain lab results; and (3) schedule office visits to obtain prescription refills.
- (h) Defendants **STEPHEN J. SCHNEIDER** and **LINDA K. SCHNEIDER** instructed providers to indicate that they had provided a higher-paying office visit service, known as a 99213 Office Visit, even though they had not provided such service. Both defendants changed Fee Tickets (the document the Clinic billing staff used to determine what services should be billed to Health Care Benefit Programs), indicating that the higher-paying 99213 service had been provided, when it had not been provided, resulting in the Clinic receiving monies to which it was not entitled.
- (i) Defendants **STEPHEN J. SCHNEIDER** and **LINDA K. SCHNEIDER** submitted claims to Health Care Benefit Programs for CPT Code 99213 for approximately 83% of all office visits billed, regardless of the true nature of the office visit, ensuring maximum payment for minimal time, while at the same time avoiding scrutiny by the Health Care Benefit Programs by rarely billing the highest office visit codes, 99214 and 99215, which the Programs often audited.

- (j) Defendants **STEPHEN J. SCHNEIDER** and **LINDA K. SCHNEIDER** and others utilized a “checklist” on patient progress notes to indicate falsely that providers had performed thorough physical examinations, when, in truth and in fact, the providers performed only cursory physical examinations, if any.
42. During the course and in furtherance of the conspiracy and scheme, the defendants **STEPHEN J. SCHNEIDER** and **LINDA K. SCHNEIDER** emphasized volume over quality of care. For example:
- (a) Claims the Clinic submitted to Health Care Benefit Programs indicate that individual providers billed for ostensibly providing services to 50 or more patients per day on a regular basis. During the period January 2003 through October 2005, defendant **STEPHEN J. SCHNEIDER** billed for ostensibly providing services to 50 or more unique patients per day for approximately 20% of the days on which he billed services. For example, on November 29, 2004, defendant **STEPHEN J. SCHNEIDER** billed for ostensibly providing services to 120 unique patients, with 108 of those services being billed as office visits.
  - (b) Health care providers who worked at the Clinic describe the environment as overwhelming and chaotic. There was an overwhelming number of patients to be seen, resulting in rushed and insufficient examinations. Patients’ medical records or “charts” were often missing, or the charts were missing key documentation. Medical records were illegible and scant.
  - (c) The Clinic fragmented patient care among the various providers, with patients seeing multiple providers. Consequently, the chaotic environment, including the poor documentation, resulted in both poor quality of care and opportunities for patients to obtain inappropriate early refills of controlled drugs.
  - (d) Although health care providers complained to defendants **STEPHEN J. SCHNEIDER** and **LINDA K. SCHNEIDER** about the overwhelming workload and chaotic working conditions, the Clinic continued to operate in the manner described above.

These allegations will be proved through evidence offered at trial and will prove how the defendants operated their conspiracy and scheme to defraud. These facts are additionally relevant to undermine any claim that their Clinic was a legitimate medical

practice. Finally, these facts were shared with the experts and they will therefore inform and support their opinions.

**Paragraphs 11, 70, 77 and 81:** Defendants claim that these paragraphs should be stricken, along with **Attachment 1**, because they refer to patient deaths, and “all patients of all doctors die.”<sup>11</sup> The defendants also claim that to allow these allegations to stand would require the defendants to put on expert testimony regarding 56 deaths and would require a mini-trial on each allegation. None of this information should be stricken, as it is key evidence of the defendants’ knowledge and intent.

**Paragraph 11** states as follows:

As a result of the defendants’ operating a Pill Mill instead of a legitimate medical practice, that is, as a result of their conspiracy to illegally distribute controlled drugs and scheme to defraud, numerous patients were hospitalized due to overdoses of prescribed drugs, and numerous patients died of such overdoses. Beginning at least as early as February 2002, defendants **STEPHEN J. SCHNEIDER** and **LINDA K. SCHNEIDER** were on repeated notice that their purported “pain management treatment” practices were resulting in patient deaths and overdoses, yet the defendants did nothing to alter their practices, and deaths and overdoses continued. At least the following number of defendants’ patients – **56** – died of accidental drug overdoses in the following years:

2002	2
2003	13
2004	11
2005	18
2006	9
2007	3

The average age of these patients was 40, with the youngest being 18 years old, and the oldest being 59. See Attachment 1, which is incorporated herein by reference.

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<sup>11</sup> Doc. 101 at p. 8.

**Paragraph 70** reads:

Prior to Eric's death, at least 48 other Clinic patients had died of accidental drug overdoses, including a patient who died the day before, on April 21, 2006.

Similarly, **Paragraph 77** reads:

Prior to Robin's death, at least 54 other Clinic patients had died of accidental drug overdoses.<sup>12</sup>

**Paragraph 81** contains the charging language of Count 5, which states:

From in or about January 2002, and continuing through on or about the return of this Indictment, within the District of Kansas, the defendants, **STEPHEN J. SCHNEIDER and LINDA K. SCHNEIDER a/k/a LINDA K. ATTERBURY**, not for a legitimate medical purpose and beyond the bounds of professional medical practice, did knowingly and intentionally distribute and dispense, and caused to be distributed and dispensed, Schedule 2, 3 and 4 controlled substances to at least the below-listed individuals, which resulted in their serious bodily injuries and deaths:

<b>Name</b>	<b>Age at Death</b>
Kandace B	43
Dalene C	45
Victor J	48
Mary L	55
Heather M	28
Jo Jo R	46
Brad S	53
Katherine S	46
Randall S	52
Mary Jo S	52
Robert S	31

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<sup>12</sup> Inexplicably, defendants do not ask to strike similar Paragraph 62: "Prior to Patricia's death, at least 34 other Clinic patients had died of accidental drug overdoses."

Name	Age at Death
Toni W	37

The Indictment alleges that the defendants' actions and inactions caused and contributed to multiple overdose deaths, and also alleges that the defendants had notice of the many overdose deaths, which allegations are directly relevant to the defendants' knowledge and intent. As many witnesses will testify, the numbers of deaths associated with the defendants' medical clinic – standing alone – is evidence that the defendants did not run a legitimate medical clinic and that the prescriptions were not for a legitimate medical purpose and were not issued within the ordinary course of professional practice. These paragraphs cannot be stricken, as they are key facts to be proved at trial and to be relied upon by the expert witnesses.

The expert testimony will be that the number of deaths of defendants' patients, of which defendants had notice, and the fact that these deaths were all attributable to overdoses of prescription medications, put the defendants on notice that the prescribing practices at the Clinic were deadly. This "notice" issue has been a factor in the experts' opinions, and will be a factor underlying the testimony of many other witnesses, including Emergency Room physicians and the Coroner's Office employees. There will be no need for "mini-trials" because the information regarding these deaths can be dealt with expeditiously through experts' opinions, including defendants' expert.

With regard to **Attachment 1**, the defendants' main complaint seems to be that they are not alleged to have directly caused or contributed to all 56 deaths. But, such an allegation need not be made to warrant evidence that the defendants' practices with

regards to all 56 patients were outside the bounds of professional medical practice and that their prescriptions of narcotics were without a legitimate medical purpose.

Additionally, at the time the Indictment was issued, the government's experts had not reviewed all 56 deaths. When that review is complete, Attachment 1 may need to be updated in a Superseding Indictment.

With regards to **Paragraph 81**, since this is the charging language, it can hardly be considered surplusage, since the Grand Jury found probable cause to indict the defendants on Count 5.

**Paragraphs 22-24:** The defendants claim that these allegations are statements of law and that the government is trying to step into the role of Congress in making law or the Court's role in instructing the jury. These paragraphs read as follows:

22. If a provider practicing Pain Management makes a patient worse, and the provider does not change the course of treatment, the provider is not practicing legitimate medicine.
23. Although uncommon, one of the most important risks of the long-term prescribing of controlled drugs for chronic pain is the development of an addiction problem, or the worsening of a previous addiction problem. Risks of addiction increase if the patient has a psychiatric history, or a non-opiate addiction history, and risks of addiction significantly increase if the patient has a current or historical addiction to cocaine or opiates. Addiction or addictive behavior is a strong indication to cease prescribing controlled drugs, even if there is an established legitimate medical purpose for the prescriptions.
24. Continuing to prescribe controlled drugs to a patient who is demonstrating aberrant behavior is doing harm to the patient. If this situation continues, it indicates that the prescribing is for other than a legitimate medical purpose and is outside the usual practice of medicine.

Neither of defendants' claims is correct. These allegations will be offered through expert testimony to explain, in part, why the experts believe the defendants were not

prescribing controlled substances for a legitimate medical purpose and outside the usual practice of medicine. As such, they are properly in the Indictment. If the defendants disagree with these allegations, they can present contrary evidence. But, such is not the basis for striking surplusage.

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Even this cursory examination of the information the defendants seek to strike makes clear its relevance. Furthermore, the defendants do not come close to making a showing that the language is “inflammatory.” All evidence to be offered against the defendants will be prejudicial, as it must be, to convict them of the crimes charged.<sup>13</sup> But, because the government intends to offer evidence in support of the allegations in the Indictment, and because those allegations all go to prove the defendants’ guilt, none can be stricken as surplusage.

#### CONCLUSION

Each and every paragraph described above relates directly to the conspiracy, drug distribution, fraud, or money laundering charges. Thus, their relevance cannot be seriously disputed. The paragraphs do not contain inflammatory language. Instead, they contain allegations the government will prove at trial. Consequently, the Court should summarily deny defendants’ joint motion to strike surplusage.

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<sup>13</sup> See, e.g., United States v. Hedgepeth, 434 F.3d 609, 612 (3d Cir. 2006) (“information that is prejudicial, yet relevant to the indictment, must be included for any future conviction to stand”).

Respectfully submitted,

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United States Attorney

s/ Tanya J. Treadway

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Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following individuals:

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