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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
TOPEKA, KANSAS

FILED
2003 APR -1 P 1:16

UNITED STATES OF AMERICA,)
----- Plaintiff,)
vs.)
WILLIAM L. PICKARD and)
CLYDE APPERSON,)
----- Defendants.)

RALPH L. DELOACH
CLERK
DEPUTY
AT TOPEKA, KS.
Case No. 00-40104-01/02

PARTIAL TRANSCRIPT CONSISTING OF THE ENTIRE
TESTIMONY OF DEA CHEMIST ROGER ELY
HAD DURING JURY TRIAL
BEFORE
HONORABLE RICHARD D. ROGERS
and a jury of 12
on
March 11, 2003

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E X H I B I T S

PICKARD EX. NO.:	OFFERED	ADMITTED
P-50c through P-50i	69	(Under advisement)

1 MR. RORK: Your Honor, the defense
2 would call Roger Ely.

3
4 ROGER ELY,
5 called as a witness on behalf of the Defendant
6 Pickard, was sworn, and testified as follows:

7
8 MR. RORK: And then, Your Honor, just
9 for the record, I would note that there would
10 be a matter I would need to take up with you.
11 Instead of doing it at this time, I would ask
12 to do it out of order when I get done
13 questioning the witness at the next break.

14 THE COURT: That would be fine.

15 MR. RORK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. RORK:

18 Q. Would you state your name for the record,
19 please?

20 A. Yes. It's Roger Ely, E-L-Y.

21 Q. And, Mr. Ely, how are you employed?

22 A. I'm a senior forensic chemist with the Drug
23 Enforcement Administration's laboratory in San
24 Francisco, California.

25 Q. And how long have you been employed in that

1 capacity?

2 A. It will be 16 years this August.

3 Q. And what is your training and background in as
4 a senior forensic agent?

5 A. Senior forensic chemist.

6 Q. Sorry.

7 A. I have a bachelor's degree in chemistry.

8 MR. HOUGH: Judge, we'll stipulate
9 that he is a senior forensic chemist
10 qualified--

11 THE COURT: Well, he'll probably want
12 to give-- overruled. I mean, go ahead.

13 Q. (BY MR. RORK) You may respond.

14 A. I have a bachelor's degree in chemistry from
15 California State University in Fresno. At the
16 time I was pursuing my degree, I worked in the
17 crime laboratory at the Fresno County Sheriff's
18 Department.

19 In 1982, I went to work for the
20 Washington State Patrol Crime Laboratory system
21 located in a satellite laboratory in Kelso,
22 Washington, which is about 40 miles north of
23 Portland, Oregon.

24 Q. And how long were you in that position in
25 Portland, Oregon, until you then went to San

1 Francisco?

2 A. I was about-- let's see seventy-- about
3 six-and-a-half years at the Fresno County
4 position and about five-and-a-half years with
5 the Washington State Patrol.

6 Q. And what do your duties involve?

7 A. My primary duty is the examination of what we
8 call solid dosage drugs. Those are items which
9 are seized by our agents and other federal
10 agencies for the presence of controlled
11 substances.

12 Q. And how is that undertaken in general?

13 A. Using chemistry.

14 Q. Yes. In an office somewhere?

15 A. In a laboratory in San Francisco.

16 Q. What are your professional organizations that
17 you belong to?

18 A. I am a member of the Northwest Association of
19 Forensic Scientists. I'm also a member and one
20 of the founders of a group called the
21 Clandestine Laboratory Investigating Chemists
22 Association.

23 Q. Is that also known by the initials CLIC?

24 A. Yes, we refer to it as CLIC.

25 Q. And go on with your other associations and I'll

1 get back to that one.

2 A. That's pretty much it for now.

3 Q. With respect to the-- the Association of
4 Forensic Scientists what does that involve?

5 A. With the Northwest Association of Forensic
6 Scientists, I was a general member joining
7 about 1982. I have held offices as the
8 newsletter editor for about seven or eight
9 years. I was also membership secretary for
10 about six or seven years. I was active in the
11 association in rewriting and updating our
12 by-laws and constitution.

13 I have presented technical papers at
14 their meetings, I have provided training
15 sessions in the areas of clandestine drug
16 laboratory investigation and also crime scene
17 investigative photography for their CLIA
18 sessions.

19 Q. And with respect to your-- you said you were a
20 founding member of CLIC?

21 A. Yes, sir.

22 Q. And what was the purpose for that organization?

23 A. The purpose of the organization--

24 Q. Yes.

25 A. -- was in 1988, '89, a couple of us who do a

1 lot of drug laboratory work, especially for
2 methamphetamine laboratories, saw a need to
3 have an information-sharing vehicle. We
4 proposed that we would try to start a forensic
5 association dealing specifically with
6 clandestine drug laboratory information and
7 seizures, as that there was nothing like that
8 existing in the world at the time.

9 Q. And in starting that up, who was allowed to be
10 a member of that?

11 A. Only individuals who worked for law enforcement
12 agencies who actively were involved in the
13 investigation or-- of the scene and also the
14 analysis of suspected methamphetamine
15 laboratories, police officers who had
16 investigative duties with clandestine
17 laboratories, supervisors who might supervise a
18 chemist or an investigator to-- in doing such
19 duties. And then we have another category that
20 if we felt that the individuals had a need to
21 know or would benefit the membership, then we
22 would also allow them to join.

23 Q. And with respect to someone that had a need to
24 know, was there a membership application that
25 was submitted or how did that come about?

1 A. Yes, there was a membership application. If
2 you wanted to fall under that particular
3 category, you had to provide a written
4 justification. At the time of the
5 justification, it would go to the membership
6 committee and usually to the Board of Directors
7 for a decision.

8 We would look at impact, we would look at
9 things such as risks of what we considered
10 sensitive information in the use of that
11 particular information, the likelihood that it
12 might get into the hands of individuals who
13 didn't have a right or a need to know that type
14 of information.

15 Q. And I assume, as with any organization, when
16 you first began in the year of 1988 and '89,
17 how much was your membership then, do you know?

18 A. We established a level at 130 prospective
19 members. We either-- there were about eight of
20 us that set up the group. We all had contacts
21 in the field. We made notice to those
22 individuals of our intentions to try to form a
23 group such as CLIC. At the time we set a
24 break-even point about 130 people-- excuse me,
25 100 people to go ahead with the incorporation

1 papers in the state of California. As it was,
2 we had about 130 to 136 who were interested.

3 At our first meeting in San Diego, we
4 took on about another 75 members. Currently
5 we're sitting right about 500 members,
6 representing the-- most of them are from the
7 United States, and they also represent probably
8 about another 15 foreign countries.

9 Q. Around 1995 do you have any idea how many
10 members you had?

11 A. No, not offhand.

12 Q. And would the membership that was initially set
13 up with the 130, was that throughout the United
14 States or limited to a geographical area?

15 A. It was open throughout the United States. The
16 biggest draw of our individuals happened to
17 have come from California, primarily because
18 that's where the methamphetamine laboratory
19 was-- the problem was the worst.

20 Q. And was the primary purpose initially for CLIC
21 dealing with methamphetamine laboratories?

22 A. That's primarily been the thrust of the
23 organization, period, has been methamphetamine
24 laboratories. We saw it not only as a way to
25 get information out, but also to provide needed

1 training in analytical methodology and trends
2 and other types of information which would
3 better help the field chemists investigate
4 dangerous situations of clandestine drug labs.

5 Q. And what is your definition of a clandestine
6 drug lab?

7 A. Well, my definition of a clandestine drug
8 laboratory would be any laboratory
9 manufacturing a controlled substance that isn't
10 licensed by DEA within the United States.

11 Q. And other than the DEA laboratories where you
12 worked at, are there such laboratories that are
13 permitted or allowed to be licensed by the DEA
14 to manufacture substances that you're aware of?

15 A. I don't know that.

16 Q. Like for private labs, are there private labs
17 that are authorized to identify or test
18 controlled substances?

19 A. I'm not familiar with how the regulatory
20 control goes regarding the DEA licensing.

21 Q. When you talked about the analytical
22 methodology, what would that involve?

23 A. That would involve the different and novel
24 methods of analyzing precursors or controlled
25 substances, we do a lot of work to try to

1 provide what we would consider profiling
2 information where we would take a sample and
3 not necessarily look at the main components,
4 say methamphetamine, but look at the stuff down
5 in the grass, down in the baseline. And from
6 that, try to determine what kind of route or
7 methodology the individual was using to make
8 the drug. That helps us establish a case based
9 on precursors present or reagents.

10 There are other types of analytical
11 methodology, for example, now are iodine and
12 red phosphorous, a lot of these laboratories
13 don't have elemental methods to identify these
14 substances and people in our association have
15 come up with alternatives using gas
16 chromatography and mass spectroscopy, which is
17 something that all of the labs do have.

18 Q. And when you say identify precursors, are you
19 talking about to actually analyze a substance
20 and see what it is or-- or what do you do?

21 A. Yes.

22 Q. And when you talked about tracking the
23 precursor, who does that involve?

24 A. I didn't say anything about tracking the
25 precursor.

1 Q. Well, you indicated that they did something--
2 something with the precursor. What was it?

3 A. Analyze the precursor.

4 Q. Right. And you talked about a controlled-- for
5 controlled substances.

6 A. Yes.

7 Q. But it was a method to analyze precursors that
8 were presented to you by someone or how do you
9 acquire those?

10 A. Most of the precursors are pretty
11 straightforward. Some of the multi-synthetic
12 group where you've got to go through several
13 steps, there is not a lot of good analytical
14 data there for us to do the identification. So
15 people would present their findings. Some of
16 the by-product and profiling we would do is
17 hopefully get enough information from the
18 finished sample that would point back to a
19 particular route or a particular method that
20 was used to manufacture that controlled
21 substance.

22 Q. And when you're talking about a route, does
23 that mean like a geographical area? What do
24 you mean by a route?

25 A. A route is what chemicals were used. Chemistry

- 1 is one of those things where it would be like
2 driving from here to Kansas City, there are
3 numerous different roads that you can take to
4 get there. If you take the fastest way, you
5 will get there quickly. If you want to take
6 country roads, you can take country roads.
7 Eventually, you're going to get to Kansas City.
- 8 Q. And that route analysis is different than as to
9 what path the precursor may have traveled to
10 arrive at the location it was used. That's
11 what I'm trying to say.
- 12 A. Yes, that's correct. It has nothing to do with
13 the physical tracking of that material.
- 14 Q. And what-- you had indicated that there was the
15 iodine and red phosphorous as a precursor. And
16 what-- what to you is a definition-- what do
17 you define as a precursor?
- 18 A. What I define as a precursor is any chemical or
19 substance which donates a portion of its
20 chemical structure to the final product or to
21 an intermediate along the way to the final
22 product.
- 23 Q. And is the precursor identified by you in the
24 testing at the laboratory of the substance
25 given to you by somebody? For instance, if

1 you-- if a sample is gathered by a DEA agent
2 somewhere, I assume that's who you get your
3 samples from?

4 A. That's correct.

5 Q. Do you get your samples also from state
6 agencies?

7 A. We can.

8 Q. Do you get your samples from private
9 individuals?

10 A. No.

11 Q. The samples that are given to you by the DEA
12 agents, are those usually acquired by someone
13 out on the street?

14 A. I-- they come from the agents. The method and
15 manner which they were obtained really is not
16 of concern to me.

17 Q. So when you receive the item, then, in the
18 route and tracking that you do, again, doesn't
19 deal with the physical manner of the item, it
20 deals with the contents of the sample.

21 A. It deals with how that particular substance was
22 made.

23 Q. And when you take the analytical approach to
24 how that substance was made, what type of
25 identifiers are you looking for?

1 A. We're looking for reaction by-products as a
2 rule. In the manufacture of a controlled
3 substance-- or of any substance or in any type
4 of chemistry when you run a reaction, there are
5 very, very few reactions that exist where
6 starting with components A and B that combine
7 and totally make C, your final product. Most
8 often, there are side reactions which will form
9 other types of product. And from those other
10 types of products, we can make an
11 interpretation.

12 For example, in baking when you bake a
13 cake, you put the cake mix together, in the end
14 you get a cake. With chemistry, when you put a
15 cake together, you'll end up with a cake, you
16 may end up with a couple of cookies, you may
17 end up with a banana nut muffin, you may end up
18 with a little cherry tart. And depending upon
19 whether that tart is cherry or strawberry is
20 going to tell you something about the starting
21 materials and how they came through.

22 Q. And in the process of looking at those samples,
23 are there ways to identify whether or not a
24 finished product may have come from the same
25 source?

1 A. Only--

2 MR. HOUGH: We'll object as to
3 relevancy.

4 THE COURT: Well, I can't tell where
5 we're going. Overruled, go ahead.

6 A. Only if it is fairly unusual. There is some
7 work on trying to establish back to a single
8 source. I haven't trusted much of the data
9 that I have seen so far on that. However,
10 there are some reactions which are pretty
11 unusual in a geographical area which can afford
12 you to say that it's a higher possibility that
13 that particular sample came from this
14 particular individual.

15 Q. In your duties as for the DEA in the
16 laboratory, that consists of analyzing samples.
17 Correct?

18 A. That is the primary duty, yes.

19 Q. Are there secondary duties?

20 A. Yes.

21 Q. What are those?

22 A. I am involved in the investigation of suspected
23 clandestine laboratories, I also teach agents
24 and investigators in safety training, how to
25 properly protect themselves against any kind of

1 physical harm from the chemicals when they do
2 the seizure. I'm also heavily involved in the
3 training of state and local and also our own
4 chemists in the area of analyzing drug
5 laboratories, interpreting that information and
6 reporting it in a concise manner for court.

7 Q. And when you say reporting it, are you meaning
8 testifying or preparing your--

9 A. Written report and also testifying, yes.

10 Q. And as part of your duties with the DEA, do you
11 also put on seminars or continuing-type
12 educational activities?

13 A. Yes, I have.

14 Q. Of what nature?

15 A. I have been invited to Australia to participate
16 in a two-week training course there for their
17 local law enforcement in safety training. I
18 also spent a week talking about chemistry and
19 analytical methodology to chemists from New
20 Zealand and Australia. I was invited to speak
21 at an international symposium in Los Angeles at
22 UCLA on methamphetamine laboratories. I was
23 invited to speak in New Zealand on current
24 clandestine drug lab trends in the United
25 States. I've presented a workshop at the

1 American Academy of Forensic Scientists
2 regarding general trends over ten years on
3 methamphetamine labs.

4 Q. And with respect to that American-- what did
5 you call it?

6 A. American Academy of Forensic Scientists.

7 Q. And what is that?

8 A. That's a-- essentially a U.S., United
9 States-based forensic association that pretty
10 much encompasses all of the disciplines of
11 forensic science; forensic odontology, which
12 would be bite mark analysis or identification
13 through teeth. Forensic psychiatry, forensic
14 engineering, criminalistics, which would
15 involve blood typing, hair and fiber. And also
16 controlled substances, drug labs, fingerprint
17 examinations, things like that. That's the
18 whole ball of wax.

19 Q. And are you a member of the American Academy of
20 Forensic Scientists?

21 A. No.

22 Q. And when you were invited to-- were you invited
23 to speak at that or just attend there?

24 A. Yes, I was invited by Doctor Barry Logan, who
25 at the time was running the Washington State

1 Toxicology Department. He is now the director
2 of the Washington State Patrol Crime
3 Laboratory.

4 Q. And do you recall whether or not that American
5 Academy of Forensic Scientists meeting you just
6 referenced would have been in February of 1998?

7 A. I believe it was in '98. It was in San
8 Francisco.

9 Q. And your participation in that particular event
10 was as a DEA officer or as a member of CLIC?

11 A. That would have been as a-- a DEA chemist.

12 Q. And what were you asked to provide
13 demonstrations on or do at that academy,
14 American Academy of Forensic Scientists?

15 A. Again, I was asked to provide a ten-year
16 retrospect of clandestine methamphetamine
17 laboratories, the types of methods that had
18 been used in the past, the types of methods
19 that were currently being used, display
20 analytical data supporting those routes and
21 different types of things.

22 Q. And were you allotted a certain amount of time
23 for which you were to give your presentation?

24 A. Yes. I was given about 45 minutes to an hour.

25 Q. And do you know how the people that were in--

1 do you know approximately how many people were
2 in attendance at that meeting?

3 A. At the American Academy meeting?

4 Q. Yes.

5 A. Thousands, 2 or 3,000 probably.

6 Q. And in what type of facility was it held at?

7 A. It was held at one of the major hotels in
8 downtown San Francisco.

9 Q. And I've never been to San Francisco, but is
10 there a major hotel that can hold 2 or 3,000
11 people there or are they congregated together?

12 A. Well, that's-- the hotel is where the meetings
13 were being held at. Whether they all stayed at
14 that hotel or not-- I know a couple of my
15 friends didn't stay at that hotel, they stayed
16 elsewhere.

17 Q. And when you gave your presentation, was it
18 like in a big ballroom or a big large area?

19 A. No, it was a room about this size.

20 Q. And do you know how people were allowed to
21 participate as an attendee at that Academy
22 meeting?

23 A. I was just a speaker. The mechanics of who and
24 what and where was done by the Academy and by
25 Doctor Logan. I just provided a service.

1 Q. And do you know whether or not the attendees
2 had to be law enforcement or could they be
3 members of the general public?

4 A. I have no idea.

5 Q. And when you did your presentation, did you use
6 visual aides like photographs or a screen or
7 anything of that nature?

8 A. It was a power point presentation.

9 Q. And when you talked about the clandestine
10 laboratories, you indicated that it was-- I
11 believe you said three parts. How they had
12 been in the last ten years was one part of it?

13 A. Yes. And it was a ten-year retrospect, so it
14 went back about ten years to see how
15 methamphetamine was commonly manufactured at
16 that time. Talked about various legal
17 decisions affecting sentencing, we talked about
18 regulations that DEA and states had
19 incorporated to regulate the chemicals to make
20 it more difficult for the manufacturer to
21 obtain their supplies. Talked about various
22 different routes of manufacture, different
23 chemical processes. And from within those
24 chemical processes, the different types of
25 chemical markers which they could use to

1 identify back to that particular route.

2 Q. And in doing your presentation, was that done
3 by all research that you had personally done or
4 did you base anything upon readings or writings
5 of other individuals?

6 A. A major portion of it was based on personal
7 experience. The references regarding the
8 scientific literature, of course, came from the
9 scientific literature. Some of the reaction
10 mechanisms and things, other people had already
11 reported and identified. If I reported them,
12 then it's probably because I ran the same
13 reactions, saw the same products. And it
14 produced nice data, so I could show it nice and
15 pretty on my slide.

16 Q. And in your duties as you currently are as a
17 senior forensic chemist, do you have various
18 research materials available to you at work?

19 A. I have a limited amount.

20 Q. And what does that consist of generally?

21 A. We do have a library, the library has some
22 out-of-date copies of general organic
23 chemistry, along with some of the other
24 chemistry journals. We do actively receive the
25 American Academy's journal, which is called the

1 Journal of Forensic Scientists. And we also
2 receive an internal publication, the DEA does,
3 called Microgram. And that's pretty much it.

4 Q. What type of information is generally contained
5 in the Journal of Forensic Scientists? I mean,
6 is it published on a-- what type of frequency?

7 A. I believe it's published every two months or
8 every six weeks or so.

9 Q. And do you know what type of information is
10 generally in that publication?

11 A. It runs the full gamut of forensics. There
12 would be articles about DNA analysis and
13 looking at genetic populations. There would be
14 articles on odontology, there would be articles
15 on pathology, psychiatry, engineering,
16 controlled substances, toxicology. I mean, it
17 just runs the gamut. It's one of the, as I
18 said, the U.S.-recognized forensic group.

19 Q. And do you know, have you ever contributed any
20 writings or-- or projects to that journal?

21 A. Yes, I have.

22 Q. And how do you go about doing such
23 contributions?

24 A. Write the paper, it then goes through an
25 internal review with our agency. Once it

1 completes that review, any changes or suggested
2 changes are made, the paper is then sent to the
3 current editor of that journal, the editor
4 receives it. He then takes the paper and he
5 has a panel of peer reviewers which he ships
6 the paper off to. They read the paper, they
7 evaluate whether the content is new and
8 original, whether it's reproducible to make
9 sure that you haven't overstated the facts from
10 your data. And then it is either accepted or
11 rejected or rejected with comments or-- or
12 changes to be made.

13 Once it gets past that phase, if it's
14 outright rejected, then you're pretty much out
15 of luck with that journal. If it's rejected or
16 accepted, I guess, based on the premise that
17 you will make some changes to it, maybe in
18 writing or in structure, once those changes
19 have been made then the paper is accepted.
20 Very few that I ever know of are ever accepted
21 first time around.

22 Q. And do you know if there are limitations on who
23 can contribute or submit papers for editorial
24 consideration?

25 MR. HOUGH: Judge, we'll object to

1 relevance.

2 MR. RORK: Judge, it has to do with
3 items Mr. Pickard-- that I-- that the
4 Government seized from Planet Self-Storage and
5 other locations that they've offered for this
6 jury to consider.

7 THE COURT: Well, proceed, but why
8 don't you move to it.

9 MR. RORK: I'm attempting to, Judge,
10 to lay a foundation.

11 A. Okay. May I have the question again, please?

12 Q. (BY MR. RORK) Yes. Are there any limitations
13 on who can-- or restrictions on who can submit
14 papers to what we were talking about now I
15 believe was the American Academy-- or Journal
16 of Forensic Science?

17 A. I'm-- I don't know.

18 Q. Do you know if it's limited just to law
19 enforcement?

20 A. I don't know.

21 Q. How many papers have you submitted to that
22 during your work?

23 A. I have had two papers published in The Journal
24 of Forensic Scientists.

25 Q. With respect to the association CLIC, does it

1 put out a monthly newsletter?

2 A. We put out a quarterly journal.

3 Q. And what does it basically consist of?

4 A. It consists of new regulatory information and
5 tries to incorporate information regarding the
6 field of clandestine drug laboratories that a
7 lot of the smaller agencies, state agencies and
8 local agencies, may not have the resources to
9 find, such as federal registry notices of
10 pending action on a drug that they may want to
11 control or a precursor that they may want to
12 regulate.

13 There will be sometimes news clippings of
14 incidences which happen safety-wise in an area
15 which may warrant the attention of the members
16 to kind of keep a heads-up to be safe. We also
17 publish original papers and original commentary
18 from submitters.

19 MR. RORK: Your Honor, I know we've
20 been in here since 9:30. Do you want me to
21 continue or do you want me to take a morning
22 break?

23 THE COURT: Well, we might take ten
24 minutes at this time and then-- and then come
25 back. Let's recess for ten minutes, ladies and

1 gentlemen. Mr. Bailiff.

2 (THEREUPON, a recess was had).

3 THE COURT: All right. You may
4 proceed.

5 MR. RORK: Thank you, Your Honor.

6 Q. (BY MR. RORK) You were testifying regarding
7 the contents of the journal that was put out by
8 CLIC and you had gotten down to-- it was after
9 news clippings and some type of editorial
10 articles and you had a few other items. Do you
11 recall what those were?

12 A. Original research where an individual might
13 examine a particular aspect of a reaction,
14 analytical processes where they could identify
15 by-products or other types of materials. The
16 whole basis for the Journal's existence was as
17 a vehicle for a rapid dissemination of this
18 type of information to the field.

19 Unfortunately, when you publish in a
20 journal like the Journal For Forensic
21 Scientists or The Forensic Science
22 International, there's often somewhere between
23 one to one-and-a-half years of lag time from
24 the time you submit that information until it
25 actually reaches print. With our journal, if

1 we get it in right, we get it reviewed, we can
2 have it out in about 90 days or the next
3 journal.

4 Q. So the primary function of the CLIC is to
5 expedite the dissemination of information in
6 all of those topics to the members?

7 A. That's correct.

8 Q. And with respect to the membership that you
9 previously described of the-- of the CLIC, is
10 it similar where there's an application process
11 and then they're screened to see if they apply?

12 A. There's an application process, there is a
13 letter of verification required from the
14 individual's employer or supervisor which
15 states that, yes, this individual who is
16 applying for a membership is actively involved
17 in the investigation and analysis of
18 clandestine drug lab material.

19 Further, once we receive those
20 applications, we are pretty much a small group
21 of like-minded individuals, we all know pretty
22 much each other. We then embark upon a
23 verification process behind the scenes where we
24 will contact other members in that area and
25 seek input from these individuals as to whether

1 they truly have a need to have that
2 information, are they actually working drug
3 laboratories, things like that.

4 Q. And you had talked a little bit about that
5 there was some-- precursor regulations was part
6 of the publications in this CLIC journal. What
7 would that involve?

8 A. That would involve the reprinting of federal
9 registry notices as to the intent of the DEA to
10 restrict or list or control a particular
11 material.

12 Q. And would it be limited just to methamphetamine
13 or would it involve all precursors?

14 A. It-- no, it's not limited to methamphetamine,
15 but it borders on the emphasis of
16 methamphetamine. It also would include such
17 materials as might be popular at this
18 particular time that we're seeing a lot of.
19 For example, there's a tryptamine and another
20 compound that we have been seeing a lot of
21 which is not-- are not controlled substances.
22 Recently DEA published an intent that they were
23 going to make them emergency schedules.

24 That is information that our chemists
25 need to know for charging purposes or if they

1 get inquiries by their local enforcement
2 officers as to the control status, or their
3 local prosecutors as far as controlled status
4 is concerned.

5 Q. And with respect to the tryptamine that you
6 were just discussing about, there's been a lot
7 of testimony in this trial about various
8 tryptamines. And are you familiar as your
9 duties as a chemist with the various
10 tryptamines and their compounds?

11 A. I'm familiar with some of them.

12 Q. And when you indicated that the-- for instance,
13 the example you gave was a current tryptamine
14 that was not a controlled substance, can you
15 tell me what that involved, that tryptamine
16 involved, the bulletin or publication that they
17 were seeking emergency regulations for.

18 A. The compound on the street is known as Foxy
19 Methoxy, it 5-methoxy-diisopropyl tryptamine.
20 It is commonly being used in the rave dance
21 scene. It is not a controlled substance. I'm
22 not sure that it is clandestinely being
23 manufactured that I know of, it's being
24 received directly from chemical suppliers. It
25 has become a problem, and the agency is seeking

1 to make that an emergency controlled substance.
2 Q. I'm going to hand you what's been previously
3 marked as Exhibit P-20 that's been identified
4 in the record as a list of compounds that were
5 manufactured, used, ingested or distributed by
6 Gordon Todd Skinner. And can you view that
7 quickly with respect to that tryptamine,
8 5-methoxy whatever you just said, and see if
9 that's listed on there. I think under
10 Paragraph No. 2, there's some mention of some
11 things with the number 5 in it. Do any of
12 those in Paragraph No. 2 relate to what you
13 just talked about?

14 A. On Page 1, No. 2?

15 Q. Yes.

16 A. Is that what you're referring to?

17 Q. Yes. Are those things that have a 5 in front
18 of them, are those referencing that drug?

19 A. Well, No. 5 evidently refers to the compound
20 5-methoxy-alpha-methyl tryptamine. And all
21 these other compounds probably are the synonyms
22 or other chemical names by which that compound
23 is known as. Under No. 5, the alpha,
24 n-dimethyltryptamine, neither of those
25 compounds are the one that DEA is seeking to

1 regulate in that federal registry notice.

2 Q. So 5 would not be one?

3 A. No.

4 Q. Under No. 8, there's a number of items marked
5 meth something. Are any of those ones under
6 No. 8 on Page 1 referencing what you're talking
7 about?

8 A. No.

9 Q. I guess I will have you look at Page 2 and it
10 appears to be-- are any of those referenced in
11 No. 9 or No. 11 what we were-- you were just
12 talking about?

13 A. No.

14 Q. No. 12 on Page 2, was any of those "methies"
15 the ones you just referenced?

16 A. No. 12?

17 Q. Yes, on Page 2.

18 A. No.

19 Q. Have you finished looking at Page 2, have you?

20 A. Yes.

21 Q. Would you look at Page 3 and see if there's
22 anything on that page that refers to it?

23 A. Yes, it does, No. 13.

24 Q. No. 13. And what is No. 13 corresponds to
25 the-- what you talked to-- talked about?

1 A. No. 13.

2 Q. All of the items listed in there?

3 A. Well, the-- the first name is probably out of
4 the Merck Index or something like that. The
5 subsequent names are synonyms, other names that
6 that compound can be called, may have been
7 called in the literature, things like that.

8 Q. For purposes of the record, would you please
9 read those?

10 A. All of them?

11 Q. Yes.

12 MR. HOUGH: Well, Judge, we'll
13 object. The document speaks for itself. This
14 is cumulative and irrelevant.

15 MR. RORK: Judge, with respect-- with
16 the record-- when the prosecution put on items
17 for the record, they needed to read it into the
18 record for the purposes of the record, and
19 that's the same purpose I'm doing it here.
20 There's like four items in that paragraph.

21 MR. HOUGH: The document speaks for
22 itself, Judge.

23 THE COURT: Well, go ahead and read
24 them. Quicker to do it that way probably.

25 THE WITNESS: I will be reading it

1 with the punctuation and spelling if need be.

2 THE COURT: All right.

3 A. I'm sorry, I didn't name these. The first one
4 is Indole,
5 3-{2-(Diisopropylamino)ethyl}-5-methoxy; the
6 next one would be capital N, capital
7 N-diisopropyl-5-methoxy tryptamine; the next
8 one is 3-{2-(diisopropylamino)ethyl}-5-methoxy
9 Indole; and finally 5-methoxy- capital N,
10 capital N-diisopropyl tryptamine.

11 Q. (BY MR. RORK) And essentially what's contained
12 there-- what you've read are four different--
13 what do you call those, scientific words or--

14 A. Essentially those are four different ways to
15 name that particular compound.

16 Q. When it-- and when it's four different ways to
17 name it, does it consist of four different
18 types of ingredients in the compounds or just--

19 A. No.

20 Q. So what-- could you give me an analogy? I
21 mean, is it a different make or a structure?

22 A. Well, what-- what has happened is that early on
23 in the chemical field, there was no naming
24 convention, no manner of which any kind of
25 standardized process was involved to name

1 compounds. Therefore, a researcher would name
2 it as they were taught or as they felt best
3 described the molecule. And you have
4 researchers working in Europe, you have them
5 working in the United States, you may have them
6 working in Russia, and they're all naming
7 things a little bit differently. When I went
8 to college, we learned about what was known as
9 the IUPAC, which is a naming convention by
10 which common-- or compounds are now named. The
11 different fractions of the molecule are given
12 certain weights as to where they would appear
13 in the name to try to uniformly establish a
14 means by which these chemicals are identified.

15 And-- and, for example, if you were to go
16 out and do a literature search on
17 5-methoxy-N,N-diisopropyl tryptamine, unless
18 that name was used in literature dating back
19 into say the '50s, you wouldn't find that
20 literature. You would have to search for all
21 of these terms, because these are the possible
22 terms that it may show up in the chem abstracts
23 database or Bileschtein (phonetic) or anything
24 like that.

25 Q. So while they may contain different compounds

1 within themselves, they're just a different
2 person's manner of describing the same thing?

3 A. No, there's no different compounds in there.

4 It is one single cup. This is a Styrofoam cup.
5 We can call it a cup, we can call it a drinking
6 glass, we can call it a Styrofoam cup. And
7 it's still what it is, it's one thing, it's a
8 cup.

9 Q. And that would be the analogy to what was then
10 in 13?

11 A. That's right.

12 Q. And with respect to-- limited, again, just to
13 this same tryptamine that's in No. 13, can you
14 glance through the rest of the paragraphs on
15 that page and see if there are or not any other
16 ones similar.

17 A. Well, they're all similar, but none of them the
18 same ones.

19 Q. Okay. And other than the same one, will you go
20 to the next page and just succeeding pages and
21 look and see with your expertise if there are
22 any other same compounds listed in the numbered
23 paragraphs that you've just described.

24 A. I've read through No. 163, I don't see any
25 other occurrence of that compound.

1 Q. And with respect to ones that are similar, what
2 do you mean by similar in nature of compounds?

3 A. The tryptamine derivatives, they have the basic
4 moiety of a tryptamine molecule present in the
5 structure.

6 Q. And is there currently existing any type of
7 scientific number of how many tryptalines
8 (phonetic) compounds are known to mankind?

9 A. I don't-- I'm not aware of any.

10 Q. I mean, when you say similar ones to that
11 5-methoxy that you talked about.

12 MR. HOUGH: Objection, relevance.

13 THE COURT: I'm going to sustain it
14 now. We're getting too deep in this to--

15 MR. RORK: Well, Judge, it goes with
16 respect to-- all I'm asking him is the similar
17 ones. I'm not asking him to go through and
18 identify them, but just what are the similar
19 ones as it relates to the effects and in that
20 nature is the purpose of question.

21 MR. HOUGH: Still irrelevant, Judge.

22 THE COURT: I sustained the
23 objection.

24 Q. (BY MR. RORK) With respect to, then, the
25 precursor regulation that you were discussing

1 that was published so the information can be
2 brought out, earlier, this was an example of
3 this item you called-- I believe you referred
4 to it as a nickname for this chemical compound.
5 What did you call it?

6 A. First of all, this is not a precursor, this is
7 an actual substance which is being abused. In
8 the journal we will publish federal registry
9 notices which deal with the regulation of
10 precursor or essential chemicals and reagents.
11 And we will also notify of pending regulations
12 to make a substance controlled.

13 Q. And with respect to this particular compound,
14 what did you refer to it, as a nickname of it?

15 A. Foxy, F-O-X-Y, dash methoxy.

16 Q. And are you familiar with or aware of any other
17 street names it's been referred to by the
18 raves, that you've indicated that you don't
19 really use that.

20 A. I've also heard it called just simply Foxy.

21 Q. Have you ever heard it referred to as called
22 Frank?

23 A. No.

24 Q. And when you indicate that the precursor
25 information would be sent out, does that mean

1 the notices in this CLIC magazine would deal
2 with what items are used to make this or what
3 do you-- what do you mean when you refer to--
4 that the precursor information will be
5 distributed?

6 A. Two different things. The precursor
7 information doesn't have anything to do with
8 this particular compound. These are published
9 federal registry entries of the intent of the
10 Drug Enforcement Administration to somehow
11 either regulate or control a material. The
12 federal register entries that the DEA is making
13 that I'm interested - and from what I
14 understand they do quite a few - deal with the
15 regulation and control of either precursor
16 chemicals or essential reagents for reactions
17 to make methamphetamine or any other kind of
18 controlled substance.

19 And secondly, the intent of the Drug
20 Enforcement Administration to place under a
21 scheduled status a substance which is currently
22 being abused by the public.

23 Q. And with respect to this one that you've
24 referred to as the 5-methoxy, does it contain a
25 substance also known as alpha ET?

1 A. 5-methoxy-- no, it's called Foxy Methoxy to
2 make it simple, and alpha-ethyltryptamine, or
3 AET, are two totally different compounds.
4 Alpha-ethyltryptamine is a controlled
5 substance.

6 Q. And--

7 A. Now, that doesn't prevent it from being present
8 as a mixture in a final form of which somebody
9 might consume for recreation. However, the
10 federal register notice specifically addresses
11 that this compound is going to be placed under
12 emergency schedule by the Drug Enforcement
13 Administration.

14 Q. Have you ever authored yourself or submitted
15 articles for consideration to be published in
16 the CLIC magazine?

17 A. Yes, I have.

18 Q. And what is the process used to do that?

19 A. That I do to do that?

20 Q. Yes.

21 A. I find something that's interesting that's
22 worthwhile to publish, I will write it up. I
23 will submit it to my supervisor, who then goes
24 to the laboratory directly for a cursory
25 evaluation as to whether it's meritorious (sic) or

1 not. It may then be reviewed locally within
2 our laboratory for form, content, conciseness
3 of thought, application.

4 Once it has cleared my local laboratory,
5 it is sent back to our main headquarters at
6 Washington, D.C., to program manager. The
7 program manager receives it. He will then-- he
8 or she will then disseminate it to reviewers
9 and other field laboratories around-- DEA field
10 laboratories in the United States. They will
11 again review the content for conciseness,
12 methodology, make sure that it's worthwhile to
13 publish.

14 They will then issue their comments back
15 to headquarters. If there are changes that
16 need to be made, that comes back to me for
17 changes. If not, then it is accepted and it's
18 authorized for publication. Generally
19 speaking, if a paper is submitted to the CLIC
20 journal from outside the DEA system, it does
21 undergo a peer review by our members that I
22 would-- in my case when I was editor the-- or
23 peer review would be by members who are
24 knowledgeable in that particular field, and
25 they would do the peer review.

1 In the case of DEA chemists, because I am
2 aware of the substantial level of scrutiny that
3 that paper gets before it ever gets to the
4 journal, then I will likely during my tenure go
5 ahead and publish it without having any other
6 kind of a peer review.

7 Q. And what year or time period do you recall that
8 you were the editor of the CLIC journal?

9 A. I was editor from 1990-- well, since inception
10 of the group when we divvied up the jobs, I
11 started out as the editor, which was about 1989
12 through 2001.

13 Q. And with respect to the types of articles that
14 were presented, for instance, in your regard,
15 the one that you presented in February of '98
16 at the program you talked about with the meth
17 labs and the ten-year usage, was that something
18 that you also presented to either the CLIC
19 magazine or other journals to be published?

20 A. No.

21 Q. What topics have you presented to the CLIC
22 journal to be published?

23 A. Extraction procedures; to take a single powder
24 sample, to extract it, to examine different
25 types of compounds that might be present, to

1 capitalize on solubilities, whether they're
2 acids, bases, polar or nonpolar. And to do
3 identification by infrared spectro--
4 spectrophotography-- infrared spectroscopy,
5 we'll go there.

6 Q. Have you presented any paperwork, do you
7 recall, on the tracking of precursors?

8 A. No.

9 Q. As editor of this magazine, CLIC, do your
10 duties coincide with your work at DEA or do
11 they overlap?

12 A. Isn't that the same?

13 Q. I don't know.

14 A. I mean, coincide and overlap, isn't that the
15 same?

16 Q. Well, it can be depending upon the definition.
17 What do you describe your duties?

18 A. Well, if they coincide, to me that means that
19 they would overlap.

20 Q. Okay. And can you describe for us how that
21 works in your situation?

22 A. I'm not quite-- I'm not quite sure what you're
23 asking. Sorry, Mr. Rork.

24 Q. Well, you have your obligations as a DEA
25 officer?

1 A. Yes.

2 Q. That's your duties?

3 A. Yes.

4 Q. And as your duties as the CLIC member, is that
5 a separate organization from your DEA
6 employment?

7 A. Yes, it is, absolutely.

8 Q. And as being separate employment, do you have
9 to do the work there separately from your DEA
10 work?

11 A. Well, first of all, the-- my activities within
12 CLIC is not an employment, there's no
13 compensation, it is specifically volunteered.
14 There is a commingling at time of the
15 activities. Sometimes an individual will call
16 me and request information regarding a
17 particular synthesis which might be unusual or
18 something which might be rather obtuse and--
19 and hadn't seen for quite a while, in which
20 case I would mention to them that it might be
21 nice if they could submit that to the journal
22 as a submission.

23 Q. So they can coincide then?

24 A. Yes, they-- they have a tendency to mingle once
25 in a while.

1 Q. And with respect to the synthesis that you
2 indicated that was unusual, in general, what is
3 a synthesis as it relates to your activity
4 and-- and controlled substances? What does
5 synthesis consist of?

6 A. What does synthesis consist of?

7 Q. Yes.

8 A. Synthesis consists of taking one or more
9 chemicals and reacting them in some manner to
10 create a second compound.

11 Q. And with respect to the meth labs that you have
12 experience in, do the operation of the meth
13 labs involve synthesis of anything?

14 A. Absolutely.

15 Q. And the synthesis involved, is there more than
16 one type of synthesis?

17 A. Absolutely.

18 Q. And when you discussed that if someone had
19 contacted you about an unusual synthesis, what
20 do you mean by that, for example?

21 A. Perhaps an unusual source of red phosphorous or
22 hydriodic acid, of iodine, which are essential
23 chemicals for that particular reaction.

24 Unusual sources of the precursor
25 pseudoephedrine or ephedrine. If an individual

1 happens to run into a laboratory, for example,
2 as I did last March, a year ago March, where an
3 individual was using a process using
4 phenyl-2-propanone, which is a process that we
5 hadn't seen in probably 10 to 12 years. That
6 is something of note.

7 We've had instances of these types of
8 methamphetamine labs using the
9 phenyl-2-propanone talked about coming out of
10 our Dallas, Texas, laboratory.

11 Q. And in your duties either as the work for the
12 DEA or for CLIC, do people contact you from the
13 general public and ask you for information?

14 A. Not much from the general public, very rare,
15 very seldom.

16 Q. What are the normal types of contacts that you
17 may receive regarding information concerning
18 either, let's say, for instance, the CLIC
19 activities?

20 A. Forensic scientists in the field working for
21 legitimate police or law enforcement
22 laboratories who, generally when they call me,
23 they run into a problem with their analysis,
24 they don't understand something about the
25 evidence that they've received or they're

1 wanting a-- a standard spectra or want me to
2 look at something regarding their analysis to
3 make an interpretation to help them out.

4 Q. Do you work with any schools in their research
5 departments?

6 A. No.

7 Q. And in the library that you used or you have at
8 work, you've indicated that you have an article
9 called the Microgram?

10 A. Our library has a large collection of chemical
11 literature. Unfortunately, it's old. Our chem
12 abstracts file stops about 1958. At that time
13 I think it was being published maybe once a
14 month or so. Now it's being published, you
15 know, weekly with different fields; weekly for
16 organic chemistry, weekly for biochemistry,
17 because things are changing so rapidly. And
18 unfortunately, we just can't keep up with it.

19 Q. And do you accumulate, yourself, articles from
20 different sources dealing with clandestine
21 labs, for instance?

22 A. Yes, to some degree.

23 Q. And with respect to the articles that you keep,
24 are they used in your work?

25 A. They are used-- yes, they're used in my work.

1 Q. And do you have them categorized in a certain
2 manner or are they just by publication or by
3 subject matter?

4 MR. HOUGH: Judge, we'll object.
5 This is irrelevant.

6 MR. RORK: Judge, I'm asking about
7 the articles that he uses in his work in
8 clandestine labs.

9 MR. HOUGH: And how he categorizes
10 them in his personal library would be
11 irrelevant to the issues before this Court and
12 jury.

13 MR. RORK: It has to do with, Judge,
14 with respect to the items that the Government
15 wants the jury to consider relevant that they
16 seized and marked as evidence and how they were
17 obtained.

18 THE COURT: Well, let's plow ahead
19 here. We've devoted a lot of time to this.

20 THE WITNESS: I'm sorry. May I
21 answer it then, Your Honor?

22 THE COURT: Yes, sir, you may.

23 A. Yes, I have a collection about 600 or so
24 journal references that I have computerized by
25 key word and topic. Unfortunately, it's

1 probably about ten years out of date.

2 Q. (BY MR. RORK) And before they were categorized
3 by key word and topic, you had to take like a
4 written publication and view it to then put it
5 into the computer. Is that how you did it?

6 A. Well, that is-- I still do it. That's how I
7 did it. It's only in my database if I
8 physically have a copy of it.

9 Q. And I'm sorry, I don't understand what you just
10 said.

11 A. I only had a-- I had a copy of the paper. The
12 only way that it gets into my database is if I
13 physically have a copy. If I'm just reading it
14 out of a journal or looking at it, it doesn't
15 get entered into my system, because that allows
16 me by having a copy to go and read that copy
17 know right where that section is.

18 Q. And do you also keep in-- your collection of
19 hard copies that you use before you enter them
20 into your database for -- for prior reference?

21 A. Uh-huh, yes, yeah.

22 Q. And other than categories and topics with
23 respect to clandestine labs, would that include
24 like the location of the lab and the source of
25 the items used or what would it generally

1 consist of?

2 A. No, generally the papers-- at that time there
3 weren't a whole lot of papers on clandestine
4 laboratories. The papers were broke down
5 according to the controlled substance the paper
6 was talking about. So if it was heroin or
7 opiates or morphine, it would be in one file.
8 Amphetamines would be in another file.
9 Marijuana would be in still other file. I had
10 things about computers and databases and
11 operating systems and things like that also
12 there.

13 Q. So essentially the basic way that you would
14 categorize the items, as you've indicated,
15 would be by the subject matter?

16 A. Oh, that would-- that worked for me. Different
17 people use different methods. That, prior to
18 the computer, seemed to work best for me.

19 Q. With respect to the inquiries that you have
20 from other people in the CLIC magazine, did it
21 have like a contact if someone wants to receive
22 information from a member of CLIC, how to do
23 that? I mean, is it depicted in the journal
24 itself?

25 A. Why would they want to contact a member? Do

1 you mean to publish?

2 Q. With respect to the publication, does it have
3 on the inside the normal language about here's
4 the home office, here's a way to reach us, or
5 anything like that?

6 A. There is a side light or side panel which lists
7 the current officers. There's a disclaimer and
8 a copyright notice at the bottom of the journal
9 indicating how we prefer to have submissions
10 made to the journal.

11 Q. And while there may be a disclaimer made for
12 submission to the journal, is there any
13 information on how either an author of an
14 article can be contacted or a member can be
15 contacted?

16 A. There's information if we publish-- if a paper
17 is published, a research paper or a technical
18 note or analytical methodology-type paper, the
19 author, their affiliation, agency, city is
20 generally included. I used to put phone
21 numbers or maybe e-mail addresses down, also.
22 But those became rather fleeting with area code
23 changes and Internet service provider changes,
24 so it's just basically Roger Ely, DEA Western
25 Laboratory and probably the street address. As

1 far as contacting individual members, the
2 membership roster is published separately from
3 the journal once a year and only goes to
4 members.

5 THE COURT: Mr. Rork, why don't we
6 break for lunch. Ladies and gentlemen, let's
7 break until about 1:20 and then we'll-- we'll
8 start again. We'll try to get started at 1:20.
9 Mr. Bailiff.

10 (THEREUPON, a luncheon recess was had).

11 THE COURT: Mr. Rork, do you have
12 something you wanted to talk to the Court
13 about? Would the attorneys--

14 MR. RORK: We can do it at the next
15 break if you want to and go ahead and start
16 with this.

17 THE COURT: All right. That will be
18 fine.

19 Q. (BY MR. RORK) With respect to the issues
20 involving submission of articles, do you, in
21 the course of your duties as a DEA agent,
22 receive inquiries from various parties outside
23 the DEA for information?

24 A. First of all, I'm not a DEA agent, I'm a DEA
25 chemist. And yes, I do receive inquiries from

1 outside of our agency regarding matters
2 applying to chemical analysis, chemical trends,
3 clandestine laboratory safety regulations and
4 laws.

5 Q. And when you indicated you're not a DEA agent,
6 you're a chemist, is that-- is there a
7 difference?

8 A. Yes.

9 Q. And at the time you worked in the San Francisco
10 laboratory in the period that you've indicated,
11 did you work with Karl Nichols?

12 A. Yes, I did.

13 Q. And as a chemist, the-- is there a list that's
14 put out for people to contact you for either
15 DEA or for CLIC or how does that occur, do you
16 know?

17 A. Specifically, if an individual wants to get
18 ahold of me through the laboratory, they can
19 call the laboratory. The people within CLIC
20 who want to contact me know to contact me
21 through the laboratory or through an e-mail.

22 Q. And do you recall in 1995 whether or not at
23 that time you had a computer and an e-mail
24 address?

25 A. Yes, I did.

1 Q. And in 1995, do you recall if your telephone
2 number was (415) 744-7051?

3 A. It was, and it remains the same.

4 Q. And that-- would that be extension 29?

5 A. That was my extension at the time, yes.

6 Q. And do you know if in 1995, about that time
7 period, if your work hours were 7 a.m. to 3:30
8 p.m.?

9 A. And they still are, yes.

10 Q. Now, I would direct your attention back to the
11 first part of 1995. Do you recall receiving
12 any contact by telephone or otherwise from
13 somebody that identified themselves to you as
14 William Leonard Pickard?

15 A. Yes.

16 Q. And how did that come about, do you know?

17 A. Initially, I was contacted by Doctor Alexander
18 Shulgin, who indicated that there was a
19 researcher at the JFK School of Government at
20 Harvard who was looking at doing some research
21 into the use of the Internet for the purposes
22 of procuring recipes or instructions to
23 manufacture illegal substances, for obtaining
24 chemicals and precursors, and also for
25 trafficking those substances via the Internet.

1 One of my areas of interest happens to be in
2 that area and monitoring things that occur,
3 such as web sites and discussion groups that's
4 on the Internet. I've been used many times as
5 a resource for that particular material and
6 I've done training in that material.

7 Doctor Shulgin asked me if it would be
8 okay if he shared my telephone number with this
9 individual. I don't recall offhand if he named
10 Mr. Pickard at that time by name or that it was
11 just an individual, but I indicated that, yes,
12 it was, for the purposes as I understood them
13 to be. I want to say within the next day or
14 so, certainly within the week, I was-- I
15 received a phone call from Mr. Pickard.

16 Q. And do you recall at the time of that phone
17 call what the nature of the inquiry dealt with?

18 A. The impression I had of the phone call was it
19 was more or less a introductory phone call;
20 this is who I am, this is what I'm interested
21 in, this is what I'm doing. I have been
22 referred to you that you might be able to
23 provide this information for my research
24 project. And, you know, what can you help me
25 with, would it be okay if I use you as a

1 resource.

2 Q. And as was related to you by Doctor Shulgin,
3 did Mr. Pickard indicate that he was, in fact,
4 a student at the Kennedy School of Government
5 and was doing some research into those areas
6 you've indicated?

7 A. I believe I said that already, yes, he was.

8 Q. And that's what Doctor Shulgin had told you he
9 was doing?

10 A. Yes.

11 Q. And when you talked to Mr. Pickard, did he
12 reaffirm that that was the areas he was looking
13 into?

14 A. He indicated the-- that he was at the JFK
15 School of Government at Harvard. However, the
16 emphasis of his phone call and the information
17 he was interested in during the course of that
18 phone call shifted from what was originally
19 represented to me by Doctor Shulgin.

20 Q. And do you recall what it shifted to?

21 A. It shifted to illicit fentanyl laboratories and
22 fentanyl analog laboratories.

23 Q. And do you recall how the nature of the
24 conversation shifted during his talks with you
25 that first time to the fentanyl?

1 A. Yeah, I'm-- I'm trying to recall. I believe
2 that we were talking in general terms about
3 controlled substances. And I believe Mr.
4 Pickard may have said something in passing
5 about fentanyl and, I believe, made the comment
6 that we hadn't had a recent fentanyl laboratory
7 in the United States back into a certain time,
8 along that line. We hadn't had one for a
9 while. And when, in fact, we had had a major
10 laboratory down around Wichita, Kansas,
11 probably within three or four years. So that
12 would have been about 1990, 1991, somewhere
13 around that time. And I had advised him of
14 that particular lab.

15 I also advised him that fentanyl was a--
16 a growing problem in the former Soviet Union,
17 that they are seeing a lot of illicit
18 laboratories there being run out of college
19 chemistry departments by college students,
20 including some who had won a chemistry
21 competition were actually manufacturing
22 fentanyl. And he was interested.

23 Q. And did Mr. Pickard indicate to you what he
24 was-- or asked you to send him anything?

25 A. Did he ask me to send him anything? No.

1 Q. And during the conversation, did you discuss or
2 indicate to him any materials or items that you
3 may have in relation to this fentanyl issue?

4 A. Regarding the-- the laboratory that was in
5 Wichita, Kansas, the defendant who was in that
6 case was named George Marquardt. Mr. Marquardt
7 was the subject of an ABC News, Dateline
8 segment, oh, a couple of years earlier where
9 the reporter sat down and spoke with him from
10 prison about what he had done, how he had done
11 it and his attitudes in general about drug
12 trafficking and things like that.

13 I received-- I saw the tape at a training
14 session, I had contacted an agent who presented
15 it, he gave me a copy of it, which I've
16 incorporated into my training. I had asked Mr.
17 Marquardt-- or Mr. Pickard, I'm sorry, Mr.
18 Pickard if he had ever seen that segment, he
19 indicated that he had not. I advised him he
20 could probably get a copy from ABC
21 News/Dateline or I could burn him a copy from
22 the one that I had. I don't know if it made
23 much of a difference, but I volunteered-- at a
24 time, I volunteered to send him a copy of that
25 tape.

1 Q. And I will have you look at what's been
2 admitted into evidence by the Government and
3 marked as Exhibit No. 549 and ask you if you
4 could examine that package and the contents
5 inside to see if it looks familiar?

6 A. The box is a box that is addressed to me at the
7 DEA Western Lab in San Francisco, excuse me,
8 from Hewlett Packard's Corvallis Division up in
9 Corvallis, Oregon. This was a return box used
10 for a laptop computer that I had sent out for
11 repair. I reuse boxes around the lab, so
12 that's what the tape got thrown in.

13 Inside there is a Fuji tape with a typed
14 label on the spine saying ABC, Day One, the
15 Evil Genius. There's also a 60 Minutes segment
16 about Hell's Angels that was also included.
17 There is a handwritten note on a Post-It pad
18 dated 3-13, which also accompanies it.

19 Q. And is that handwritten note something that
20 came from you?

21 A. Yes, this is what I wrote.

22 Q. And for purposes of the record, can you read
23 what the note cyst?

24 A. Certainly. Again, it's dated 3/13. It says,
25 "Leonard, pop some popcorn, sit back for an

1 entertaining time compliments of Marquardt."

2 And it's signed Roger.

3 Q. After that exhibit had been forwarded by you to
4 Mr. Pickard, do you recall whether or not he,
5 Mr. Pickard, contacted you by phone or e-mail
6 thereafter to discuss certain activities?

7 A. He-- he either contacted me by e-mail or by
8 phone, I don't recall.

9 Q. Do you recall whether or not after receipt of
10 the video Mr. Marquardt made-- or Mr. Pickard
11 making any inquiries of you concerning
12 procedures Mr. Pickard needed to undertake in
13 order to interview Mr. Marquardt at any Bureau
14 of Prisons location?

15 A. No, he made no inquiries to me regarding that.
16 I remember he contacted me and indicated that
17 he had received the tape and he had watched it.
18 And I remember him saying that he had located
19 Mr. Marquardt at the Sheridan federal prison in
20 Sheridan, Oregon. And I believe at that time
21 he said he was in the process of trying to make
22 contact with Mr. Marquardt to see if he would
23 be willing to talk about his adventures as a
24 fentanyl chemist regarding his-- or relevant to
25 his case.

1 Q. And do you recall whether or not Mr. Pickard
2 indicated to you that after he had received
3 some letters-- or do you recall Mr. Pickard
4 advising you that he did, in fact, establish
5 contact with Mr. Pickard-- Marquardt?

6 A. Yes. And I don't recall, it was a period of
7 time afterwards, it may have been a month, two
8 months or so. I-- I don't recall the exact
9 dates, but he did make contact saying that he
10 was able to get Mr. Marquardt to open up to him
11 by providing a couple of science books to him.
12 I think one was on mass spectroscopy and
13 interpretation, I don't recall what the other
14 one or two were. But then Mr. Marquardt had
15 typed a single-spaced document, maybe seven,
16 eight pages in length, which detailed his
17 operation and how he performed the synthesis
18 and what he was doing and what he was thinking
19 at the time.

20 Q. And do you recall whether or not at any time
21 Mr. Pickard may have advised you that he, Mr.
22 Pickard, had scanned or viewed around 275
23 newspaper articles involving the Marquardt
24 occurrence and to see if you wanted to-- any of
25 the information from those edits or reviews

1 that he had done?

2 A. I believe he indicated that he had looked
3 through the Nexis/Lexis system, whatever that
4 particularly is. And he may have offered, but
5 I really wasn't interested.

6 Q. Do you recall whether or not Mr. Pickard sent
7 to you a copy of the synthesis that Mr.
8 Marquardt had sent to Mr. Pickard and your
9 indicating that you would review it at some
10 point?

11 A. Mr. Pickard sent me what he represented to be
12 Mr. Marquardt's correspondence with him, he
13 sent me a photocopy of it. And as far as I
14 remember, it was for my information, it wasn't
15 for any kind of review, it was just for my
16 curiosity.

17 Q. And did that piece of paper that Mr. Pickard
18 represented to you was from Mr. Marquardt, in
19 fact, not contain information regarding Mr.
20 Marquardt's synthesis used in his fentanyl
21 manufacturing?

22 A. You know, I don't really recall. Mr. Marquardt
23 was a fairly fluent, flowery-type of writer, he
24 would like to go on and on about things and
25 wasn't very specific. In honesty, I glanced at

1 the document, put it back in the FedEx folder
2 and it sat on my counter for maybe two or three
3 years before I finally threw it away.

4 Q. Let me hand you what's been marked for
5 evidentiary purposes as P-50. And I'm going to
6 open it up and ask you if you would look
7 through the items in P-50 and see if you find
8 anything that may represent the document you
9 referred to that Mr. Pickard had forwarded you
10 purporting to be the synthesis of Mr.
11 Marquardt?

12 MR. HOUGH: Well, Judge, we'll
13 object. That assumes facts not in evidence.
14 The witness did not testify he received any
15 synthesis from Marquardt. What he testified to
16 was that Mr. Pickard sent to him what he
17 represented as the correspondence he received
18 from Mr. Marquardt.

19 MR. RORK: Judge, the question, if
20 the court reporter read it back, I believe
21 would say, would you look through the exhibit
22 and see if contained therein would be a copy of
23 the documents Mr. Pickard sent to you which you
24 indicated were represented as being the
25 synthesis of Mr. Marquardt. This witness

1 earlier testified that the items sent by Mr.
2 Pickard was purported to be from Mr. Marquardt,
3 had to deal with the synthesis process used, in
4 response to my question.

5 THE COURT: Well, this gentleman is
6 here. There's an argument apparently on what
7 he said, let's-- could you tell us what you
8 said and what the situation was so we'll clear
9 that up?

10 Q. (BY MR. RORK) What items did you say Mr.
11 Pickard sent to you and represented it to be
12 of?

13 A. Mr. Pickard sent me a copy of what he
14 represented to be Mr. Marquardt's response to
15 his questions and it was just a photocopy.

16 Q. And did you indicate that in the copy of the
17 correspondence Mr. Pickard sent to you, that
18 Mr. Pickard represented in those contents were
19 items representing the synthesis of Mr.
20 Marquardt?

21 A. Not that I recall, no.

22 Q. What do you recall mentioned about the
23 synthesis of Mr. Marquardt?

24 A. What I remember-- what I recall about it was
25 that was one of the facets that Mr. Pickard was

1 going to ask Mr. Marquardt about. Certainly
2 Mr. Marquardt didn't want to venture into that
3 territory, he didn't have to.

4 Q. And do you recall whether or not Mr. Pickard
5 ever sent to you documents that purported to be
6 the synthesis process used by Mr. Marquardt?

7 A. I don't recall. I just recall the copy of the
8 questions that he forwarded for Mr. Marquardt
9 to answer, I remember Mr. Marquardt's response
10 rather specifically because of the unusual way
11 in which he wrote the response.

12 Q. Will you look through those documents in that
13 item number and see if there are any documents
14 contained therein that correspond to either the
15 questions Mr. Pickard sent you a copy of or the
16 answers Mr. Marquardt provided that you
17 recalled.

18 A. I seem to remember these two sheets here,
19 questions. And I-- I'm assuming that these
20 were the ones that Mr. Pickard gave Mr.
21 Marquardt. There is a-- a response that just
22 simply says Doctor Pickard and it's signed by
23 Mr. Marquardt, two pages long, which is
24 consistent with the document that I saw, or at
25 least consistent with what was represented to

1 me as Mr. Marquardt's writing. Mr. Marquardt
2 had a tendency not to place a space after his
3 periods when he would end a sentence, which I
4 joked about, to myself at least, as being--
5 conserving space so that he might be able to
6 put more onto a page.

7 There is another document that says, "I
8 will assume you have your list of questions at
9 hand." That particular typing is different, it
10 does not have-- it has a space or two after
11 each of the periods, so I'm not sure if that
12 one is from Mr. Marquardt or not. And then
13 there's another page, it says question-- or,
14 "Doctor Pickard, Question 8." Again, we're
15 back to the style of where there is no space
16 after the period, which looks to me to what I
17 remember to be from Mr. Marquardt.

18 Q. And those items that I've handed you that
19 you're looking at now, were you shown those
20 prior to today by the Government--

21 A. No.

22 Q. -- or copies of those?

23 A. No. Nope. Haven't seen them since I had
24 whatever documents was sent to me back in '95 I
25 guess.

1 Q. And are you making a pile, then, of the
2 documents that you recall seeing?

3 A. Yeah, I can. I mean, there's no individual
4 distinguishing marks on these pages to describe
5 them for the record, but I can make it into two
6 piles if you'd like.

7 Q. That's fine. And then that's when I'm going to
8 make the distinguishing remark.

9 A. Okay. Okay. I would say the bulk of the
10 documents probably came to me, they look
11 familiar to some degree. And again, the typing
12 is-- is consistent with what I remember. Those
13 documents.

14 Q. Okay.

15 A. I never saw these three that I'm aware of.

16 Q. What I'm going to do for marking purposes,
17 P-50a, and I'll place that on one of the three
18 documents you've indicated you don't recall.
19 P-50b, I'll place that on the other.

20 A. I've not seen any of these.

21 Q. Right. I'm going to put P-50b on what appears
22 to be a two-page document. Correct?

23 A. Yes.

24 Q. And then with respect to the other documents,
25 I'm going to place P-50c on what appears to be

1 a two-page document that starts out with
2 questions and then they're numbered; is that
3 correct?

4 A. Yes.

5 Q. And then I will put P-50d on what appears to be
6 a two-page letter to Pickard or you've
7 indicated you've seen, d. And then I will put
8 P-50e on what appears to be-- would you-- does
9 it appear to be that P-50e are these next four
10 pages, Question 8, Question 8 continued, and
11 other-- documents you've seen before?

12 A. I'm-- you know, I don't know. There are no
13 page numbers to associate them, so--

14 Q. Sure. I'm just putting it on the mark with the
15 ones that you've indicated you may have seen
16 before. And excuse me, sir, if I may. Just so
17 the record is clear, what I've marked as the
18 pile of documents that you've indicated look
19 familiar, the ones you reviewed, that would be
20 P-50c, P-50d, P-50e, P-50f, P-50g, P-50h and
21 P-50i; is that correct?

22 A. To the best of my recollection, yes.

23 Q. And the three pages-- the two documents that
24 you do not recall seeing before would be marked
25 as P-50a and P-50b?

1 A. That's correct.

2 Q. For your information, were you told or are you
3 aware that the Government Exhibit marked No.
4 549 indicates it was taken from a storage
5 locker called Planet Self-Storage in--

6 MR. RORK: Was that Boston,
7 Massachusetts?

8 MR. PICKARD: Uh-huh.

9 Q. (BY MR. RORK) In Boston, Massachusetts, are
10 you aware of that?

11 A. What exhibit is that?

12 Q. It's the videotape.

13 A. Yes, I was aware it was taken out of a
14 mini-storage in Boston.

15 Q. And do you know whether or not the John Kennedy
16 School of Government is in Boston,
17 Massachusetts, or not?

18 A. I-- it's attached to Harvard, but I'm not sure
19 if it's in Boston proper or not.

20 MR. RORK: Judge, at this time I
21 would move for admission of Exhibits P-50c, d,
22 e, f, g, h, and i.

23 MR. HOUGH: Judge, may I voir dire
24 the witness?

25 THE COURT: Yes, you may.

1 VOIR DIRE EXAMINATION

2 BY MR. HOUGH:

3 Q. Sir, is it your testimony that you believe at
4 some point you saw documents like these that
5 Mr. Pickard provided you or that these are the
6 exact documents you saw?

7 A. Could I take a look at it, please?

8 Q. Certainly.

9 A. They are similar to documents that I remember
10 receiving from Mr. Pickard with the exception
11 of Defendant's Exhibit P-50g, as in George,
12 which is an interesting description about life
13 on the Kansas plains, making illicit drugs with
14 thunderstorms clapping in the background and
15 the fact that-- the whine of steering motors
16 and the clatter of generators in the distance--
17 (Reporter interruption). The whine of steering
18 motors and clatter of the generators in the
19 distance, life doesn't get much better than
20 this.

21 And I just remember that was a rather
22 romantic notion Mr. Marquardt had taken of his
23 work and was visualizing the-- the prairies and
24 sitting there while he had a reaction running
25 making this very dangerous drug and watching

1 the skyline. And I remember that specifically.

2 These others, again, they look consistent
3 with what I sort of recall, I can't tell you
4 whether these are actually them or not.

5 MR. HOUGH: Thank you. Judge, we
6 would have no objection to the document he can
7 identify, 50g, but we would object to the
8 others for-- on basis of foundation.

9 MR. RORK: Judge, 50a and b were the
10 ones that he initially identified that he did
11 not recall seeing anything similar. The other
12 ones I've asked for, c through i, were ones he
13 says tended-- indicated that they appear to be
14 similar to ones he received, and we would just
15 say that any objection would go to the weight.
16 And Mr. Pickard will also testify those are the
17 documents that he sent to him, I can proffer
18 the Court that.

19 MR. HOUGH: Well, Judge, at that
20 point certainly there may be a sufficient
21 foundation for admissibility. But based upon
22 the foundation present before the Court, these
23 documents we would submit are not admissible,
24 with the exception of the one he can identify.

25 MR. RORK: And, Judge, if Mr. Ely is

1 not here when Mr. Pickard testifies, then I
2 assume the Government-- there would be an
3 objection at that point that he's not there,
4 that's why I'm offering them now while he's
5 here present. And the one that the Government
6 pointed to in the blue paper is the one he says
7 he specifically recalls exactly. The other
8 ones, Judge, he says he recalls appear to be
9 similar in form and nature, he can't say they
10 are the exact ones.

11 MR. HOUGH: Judge, this witness
12 doesn't have to be present in the courtroom
13 when Mr. Pickard testifies to establish, if he
14 can establish, a foundation for the
15 admissibility of the document.

16 THE COURT: Oh, I believe I will
17 admit all of these documents. You say these
18 are similar to things you received, is that
19 what you've testified to?

20 THE WITNESS: They appear to have the
21 type of content that I remember. Certainly
22 ones that I had indicated that I-- were
23 consistent were typed in the manner of which I
24 remember, the fact that there was a period and
25 no space following that. Other than that, I--

1 I couldn't tell you. It was a long-winded
2 document and pretty verbose. I do remember,
3 though, the romanticized description of life on
4 the Kansas plains.

5 MR. HOUGH: Judge, we would submit
6 that the "life on the Kansas plain" document is
7 clearly admissible. But based upon the
8 follow-up to the Court's questioning, the
9 others clearly are not.

10 MR. RORK: And, Judge, again, he
11 testified earlier there was questions that were
12 asked, he recognized the questions and there
13 were responses and he reviewed a number of
14 materials.

15 THE COURT: Now, tell me again-- I
16 haven't seen these documents, I don't know a
17 thing about them, but c, d and e, whose
18 documents are those, were those the--

19 MR. RORK: Judge, 50-- I guess the
20 Government laid them back down here. I will
21 give them to the Court so you can-- 50a and b
22 are three documents he indicated did not appear
23 to be consistent with documents he saw before.
24 50c through i are the documents that did. And
25 g, I'm putting the blue one on top, is one he

1 specifically recalled because of the content.

2 THE COURT: Well, he cannot identify
3 50a and 50b; isn't that right?

4 MR. RORK: That's correct.

5 THE COURT: So we can forgot about
6 those.

7 MR. RORK: I haven't offered those.

8 THE COURT: All right.

9 MR. RORK: That's why I only offered
10 the other ones.

11 MR. HOUGH: Your Honor, we would also
12 submit that under Rule 403 that these would not
13 be admissible documents.

14 MR. RORK: And, Judge, these are
15 documents Mr. Pickard is testifying under and
16 they're documents that were taken from Planet
17 Self-Storage by the agent, seized pursuant to
18 their search warrant, that which item number--
19 Government's Exhibit 549 came out of the same
20 locker. And they're documents--

21 MR. HOUGH: Judge, every-- everything
22 seized from that storage locker is not
23 necessarily relevant and admissible in this
24 trial. And, in fact, the Court has ruled
25 certain documents we have offered were

1 inadmissible pursuant to 403, and we would
2 submit that these would fall under that same
3 category.

4 MR. RORK: And, Judge, there are
5 about 700 or 1,737 other documents down at the
6 DEA somewhere on the second floor that we
7 haven't offered. We have gone through these
8 documents on the time we've had on Fridays, and
9 Mr. Pickard has reviewed the documents and he
10 has picked out those documents. They also,
11 Judge, as it goes later, the defense will tie
12 into other exhibits as I'm getting into that
13 the Government's offered for one reason or the
14 other, and they're definitely relevant as the
15 Court-- Mr. Pickard's testimony will indicate,
16 and as Mr. Pickard's information has been
17 provided to you previously for the appearance
18 of this witness. That's why I didn't mark a
19 and b.

20 MR. HOUGH: At that point possibly
21 they-- the Court would make a finding that they
22 were relevant and not in violation of Rule 403.

23 MR. RORK: Judge, 5549 (sic) has been
24 identified and admitted into evidence by this
25 witness as a videotape of the Marquardt

1 occurrence, which was the initial contact by
2 Mr. Pickard. The witness also indicated there
3 were subsequent contact and communications and
4 information received. He's identified those as
5 an appearing similar in nature to the items
6 received by Mr. Pickard after his forwarding of
7 the videotape and other information.

8 MR. HOUGH: Judge, the videotape is
9 self-authenticating, those documents are not.
10 Those are hearsay documents. We don't know--
11 we cannot say for certain who authored those
12 documents. All we can say for certain, based
13 upon this foundation, is that they may have
14 been similar to some document that Mr. Pickard
15 sent this witness sometime back in 1995 or
16 thereabouts, but this witness cannot tell us
17 for sure that that's correct.

18 THE COURT: I think I just asked
19 where-- where did the original documents come
20 from, do we know?

21 MR. RORK: Those documents there,
22 Judge, came from Mr. Pickard and Mr. Marquardt
23 to Mr. Pickard. They were sent by Mr. Pickard,
24 as the witness indicated, to him. Copies of
25 those were sent to Mr. Ely at his office.

1 MR. HOUGH: Your Honor, with all due
2 respect, the only thing we know for sure about
3 those documents is that they were seized out of
4 Planet Self-Storage and that this witness at
5 some point in time, around '95 or thereabouts,
6 saw some documents provided to him by Mr.
7 Pickard that may have been similar to those
8 documents. But those certainly cannot be said
9 to be anything that this witness actually saw,
10 because those documents were taken out of Mr.
11 Pickard's locker in Somerville, Massachusetts,
12 at Planet Self-Storage.

13 MR. RORK: Judge, he's indicated he
14 received photocopies of the documents, not the
15 originals. And that those documents appear to
16 be consistent with the photocopies he received
17 based on the typing and spacing.

18 THE COURT: That is very remote,
19 though.

20 MR. RORK: I understand, Judge, but
21 I'm--

22 THE COURT: I will just take these
23 under advisement and will not admit them at
24 this time until I find out more about them.

25 MR. RORK: Do you want to keep 50a

1 and b with them? That's the ones that go with
2 those documents that are not identified as--

3 THE COURT: Well, not necessarily.
4 We don't have those identified at all.

5 MR. RORK: Well, but they're
6 identified as not being ones he's reviewed,
7 just so that they'll be along with the record.

8 THE COURT: Okay. We can hold them
9 then.

10 DIRECT EXAMINATION

11 BY MR. RORK: (Continued)

12 Q. Do you recall, after receipt of various
13 documents that you've just indicated that were
14 similar in nature of those you've identified,
15 further conversation with Mr. Pickard relative
16 to Mr. Marquardt and the research Mr. Pickard
17 was undertaking with Mr. Marquardt?

18 A. No.

19 Q. Do you recall a point in time when Mr. Pickard
20 related to you by e-mail or by telephone
21 information that-- that he understood that the
22 lab-- major portion of Mr. Marquardt's lab
23 equipment was still buried somewhere safe in
24 the State of Kansas?

25 A. I don't recall him saying that it was buried.

1 I remember him making some comment that the
2 major portion of the lab was still secreted
3 here in Kansas. My impression has been that it
4 was at a mini storage or some kind of a storage
5 facility. That would have come on the heels of
6 receiving whatever documentation that Mr.
7 Pickard had represented come from Marquardt.

8 Q. And do you recall-- and when-- being advised by
9 Mr. Pickard that the information he had dealt
10 with some of the lab equipment still being
11 secreted somewhere in Kansas, whether or not
12 you made any inquiry of him to-- if he
13 discovered those items, to let you know or keep
14 you posted, along those lines?

15 A. I-- I don't recall.

16 Q. Do you recall when Mr. Pickard provided you
17 information concerning Mr. Marquardt and the
18 laboratory equipment, any-- you gave Mr.
19 Pickard information specifically stating that
20 the majority of Mr. Marquardt's lab equipment
21 had not been seized in the Kansas raid?

22 A. No, I don't recall saying that. I didn't have
23 that much intimate knowledge of that particular
24 investigation.

25 Q. Do you recall a point in time when Mr. Pickard

1 advised you of writings to Mr. Marquardt, that
2 you then attended some conference where you had
3 contact with the lead agent in the Marquardt
4 case and discussions may have been had about
5 Mr. Pickard's contact with Mr. Marquardt?

6 A. There was-- again, there was some information
7 provided, I believe it was shortly after
8 receiving the documents that he said came from
9 Mr. Marquardt, that I was at a clandestine
10 laboratory investigators meeting in Las Vegas.
11 I was performing training for agents doing
12 synthesis throughout the day, letting them make
13 methamphetamine for training purposes. And I
14 had heard that one of the agents involved in
15 that particular case was at the meeting. And I
16 was going to try to corner him that night
17 when-- during social hour and just discuss it
18 and maybe pass it on to see what, if anything,
19 he knew about it, whether there was any
20 validity to it or not.

21 As it turned out, the agent had come in
22 the day before, taught that day and left late
23 that afternoon and I never-- never saw him. I
24 never followed up on it any further.

25 Q. Do you ever recall communicating to Mr. Pickard

1 that some of the information he had provided
2 you had been discussed with or talked about
3 between you and the lead agent?

4 A. I don't even know who the lead agent was on it.
5 The majority of my information regarding the
6 Marquardt case came off that Day One tape.
7 Other than what was on that Day One tape in a
8 couple of casual conversations with our chemist
9 in Chicago, who were at that particular site, I
10 don't know who the agent was who ran the
11 operation, I don't know the bodies involved or
12 the circumstances.

13 Q. But when you said you had heard at the
14 convention in Las Vegas that one of the agents
15 that had been involved in that case, you're
16 referring to while you were in Las Vegas you
17 heard that one of the agents who had been
18 involved in the Marquardt case was at that same
19 seminar?

20 A. It was either an agent involved in the case or
21 it was the agent's supervisor, I don't recall
22 which. Someone related to that case was there.

23 Q. Do you recall after the receipt of material
24 from Mr. Pickard to you, represented by Mr.
25 Pickard to be contact with Mr. Marquardt, Mr.

1 Pickard advising you that he had put a variety
2 of these materials together and was going to
3 put a-- a-- use them in a presentation that Mr.
4 Pickard was going to put on?

5 A. I-- I don't know about a-- a presentation. I
6 do recall there was interest in Mr. Pickard
7 publishing that particular information and the
8 synthetic information that he had obtained in
9 our clan lab chemist or our CLIC journal, and
10 that he was willing to basically go and talk
11 wherever anybody would want to listen to him,
12 do a presentation on it.

13 Q. And in relation to Mr. Pickard presenting the
14 paper or some type of material to the CLIC
15 journal, that would be the journal you were
16 talking about earlier that was put out to the
17 people that it's put out to. Correct?

18 A. Yes.

19 Q. And do you recall advising Mr. Pickard to go
20 ahead and-- he could submit whatever he wanted
21 to submit and it would be up to the editorial
22 board to determine whether or not anything
23 would be published?

24 A. That's correct. I advised him that if he had
25 something he wanted to write up, to write it

1 up, submit it, it would go out to a peer review
2 board of other chemists within the organization
3 to look at it regarding merit.

4 Q. And during the course of these conversations
5 with Mr. Pickard, do you recall him providing
6 you further information regarding his gathering
7 of data from Mr. Marquardt, other than what
8 you've testified?

9 MR. HOUGH: Judge, we'll object to
10 the leading questions.

11 THE COURT: Well, we've had a lot of
12 them in this case. Please try to make your
13 questions less leading.

14 MR. RORK: Judge, I understand. He's
15 a DEA agent-- a DEA chemist, Your Honor, and
16 works for the Government. And in that regard,
17 usually there's some latitude allowed in those
18 types of questions, so that's why I've been
19 using that.

20 MR. HOUGH: Judge, this is not a
21 hostile witness, to my knowledge.

22 MR. RORK: Judge, I never said he was
23 hostile, I said he was a Government witness,
24 Judge, there's a difference.

25 MR. HOUGH: Judge, that doesn't make

1 it impossible for somebody to ask him
2 appropriate questions just because he's
3 employed by the Government.

4 MR. RORK: Judge, I heard what you
5 indicated to me to say.

6 Q. (BY MR. RORK) With respect to the lab
7 equipment that Mr. Pickard represented to you
8 that Mr. Marquardt said was secreted in Kansas,
9 as you've testified, do you recall any
10 conversations by Mr. Pickard relative to Mr.
11 Pickard stating if you knew whether or not this
12 would be a sting operation by any Government
13 agency?

14 A. No, there was only one mention of this secreted
15 lab equipment and, again, that was made to me
16 after I had received those documents. And that
17 I recall, there was no further discussion of it
18 and he offered no more information, such as a
19 location or parameters of where this thing
20 might be.

21 Q. Do you recall in the fentanyl conversations
22 that continued with Mr. Pickard whether or not
23 he ever asked you about the submission of
24 samples for testing of various substances
25 believed to contain fentanyl?

1 A. To my recollection, we only really had one
2 discussion about fentanyl and fentanyl labs,
3 and that was on that initial phone call when he
4 contacted me after I had advised Doctor Shulgin
5 it would be okay. I do remember him interested
6 in collecting some types of samples for
7 analytical examination relative to some project
8 that he thought he wanted to do or was thinking
9 about doing, but I-- I don't recall offhand if
10 those are specifically fentanyl. You just
11 don't see that much fentanyl, and I would think
12 to make a project out of fentanyl, there's not
13 a lot of fentanyl floating around, it would be
14 a pretty difficult project to put forward.

15 Q. With respect to any discussions of samples, do
16 you recall at any time indicating to Mr.
17 Pickard whether or not he should submit those
18 to a private lab in order to avoid any
19 violations of the law?

20 A. Well, I-- I think that-- if I recall, there was
21 some intimation that he was looking at working
22 with a project and submitting-- and giving DEA
23 first crack at doing the analysis, because we
24 do typically look at things more thoroughly
25 than the state and local lab on a lot different

1 level, lower level. We quantitate the purity,
2 we look at by-products and things that a lot of
3 the state and local laboratories don't
4 necessarily have the time to do.

5 However, there is a mechanism for doing
6 that kind of work and DEA, that I'm aware of,
7 certainly doesn't accept samples from private
8 parties. If there is a situation like that,
9 I'm sure there would be all kinds of attorneys
10 involved and memorandums of understanding and--
11 and things like that to require those kinds of
12 samples. And that's out of my league, I'm a
13 bench chemist, I'm not an administrator, so--

14 Q. But do you recall making any suggestions of
15 private labs that were licensed to make any
16 analytical samples?

17 A. Yes. I believe I indicated that if he was
18 interested in a lab which might be worthwhile
19 to check on was a laboratory, I believe it was
20 in Philadelphia, called National Medical
21 Services. There is an individual who worked
22 there who was a member of our clandestine
23 laboratory investigation group who I knew who I
24 felt did a reasonable job, was a reasonable
25 chemist, reasonably skilled chemist. His name

1 was Jason Freed, F-R-E-E-D.

2 Q. Do you recall during the time that you were
3 doing the Las Vegas hands-on meth synthesis for
4 the agents any contact with Mr. Pickard by
5 telephone around that period dealing with
6 Russia and the fentanyl situation in Russia?

7 A. I-- I remember conversations with him regarding
8 fentanyl in Russia, but I couldn't put it in a
9 time frame for you.

10 Q. And with respect to the conversations of
11 fentanyl in Russia, what do you recall about
12 those?

13 A. Again, the-- the primary conversation regarding
14 the fentanyl was this first telephone
15 conversation that we had. I indicated there
16 were several seizures of fentanyl labs in the
17 former Soviet Union, I provided Mr. Pickard
18 with the name of a chemist in the Government
19 laboratory in Moscow, who was also a member of
20 our CLIC group named Vladimir Sorokin.

21 Q. And that word, V-L-A-D-I-M-I-R for the first
22 name?

23 A. I believe so.

24 Q. And S-O-R-O-K-I-N for the second name?

25 A. That's correct. I had had contact with Doctor

1 Sorokin, he had made submissions to our
2 journal. He was essentially an honorary member
3 of our association in that the yearly dues for
4 our group was more than the man made in a month
5 or two. So we allowed him to be a member on
6 the stipulation that he provided material,
7 information about the drug scene in Russia and
8 we would provide him with copies of our
9 journal.

10 All I had for Doctor Sorokin was a
11 physical mailing address and a fax number. The
12 fax number, though, did not have any area code
13 or city code or country code. I could never
14 find one and I was never provided with one.

15 Q. Do you recall any subsequent contacts with Mr.
16 Pickard relating to you follow-up conversations
17 Mr. Pickard may have had with his contacts
18 regarding this Doctor Sorokin?

19 A. All I remember is that it wasn't much maybe
20 more than a day later or so that I got an
21 e-mail from Mr. Pickard saying that here is the
22 country and city and area code for Moscow, that
23 if you're going to fax them, fax them between
24 the hours of eight and five during the day
25 because paper is so precious over there that

1 they turn their faxes off at night, so there's
2 a limited type of window.

3 I-- I believe he indicated that he had
4 been in contact with Doctor Sorokin, but I
5 don't recall offhand the topics of their
6 discussion or if he even related them to me.

7 Q. During these initial or subsequent discussions,
8 if any-- I mean that you've had with Mr.
9 Pickard, besides fentanyl, do you recall
10 talking about something known as methcathinone
11 or something like that?

12 A. Methcathinone, yes, a little bit.

13 Q. And what do you recall about the discussions of
14 methcathinone?

15 A. Mr. Pickard had indicated that he had presented
16 a paper in the spring of 1994 at the California
17 Association of Criminalists meeting in Oakland,
18 California, on methcathinone. I told him that
19 I was kind of surprised that they would allow
20 him to do that.

21 Q. And do you recall Mr. Pickard also discussing
22 with you anything dealing with other synthetic
23 drugs?

24 A. Do you know, when-- whenever he would call, he
25 would bounce around on so many different

1 topics. I-- I don't recall. I know that at
2 one point, I think it was probably in our last
3 phone call, he was prodding me about what I
4 thought the future of synthetic illicit
5 substances might be. I know that we had a
6 little bit of a discussion about heroin. So
7 I-- I probably-- probably the only one I really
8 ever recall is heroin after that.

9 Q. Do you recall whether or not Mr. Pickard ever
10 discussed with you any proposed contacts Mr.
11 Pickard was going to have with the DEA
12 involving an Afghan national?

13 A. His involvement with an Afghan national?

14 Q. Yes.

15 A. Not-- not that I recall. He-- anytime he would
16 call, he would just drop names left and right
17 that he had just briefed our administrator and
18 just briefed our SAC in the Boston area and was
19 going to do this and was going to do that. And
20 I kind of turn off to people when they start
21 dropping names.

22 Q. Do you recall in the conversations with Mr.
23 Pickard or any e-mails discussions between you
24 and he-- (reporter interruptions). Do you
25 recall any discussions with Mr. Pickard or

1 e-mails having any conversations dealing with
2 precursor tracking systems or used as a source
3 of drug intervention?

4 A. I remember him mentioning that he had spoke
5 with a colleague of mine named Jerry Massetti,
6 who is a forensic scientist with the California
7 Department of Justice Crime Labs regarding the
8 possibility of tracking chemical cans or cans
9 holding the-- the solvent Freon, which is a
10 solvent that was commonly used at that time by
11 the large Mexican national methamphetamine
12 laboratory operators.

13 I recall one e-mail in which he's-- he
14 said that he was going to follow-up with that
15 Jerry or that I should talk to Jerry about, you
16 know, his ideas and I-- I don't know that the
17 beeper technology wasn't something I'm really
18 interested in. Again, I just didn't really
19 care.

20 Q. Do you recall any discussions with Mr. Pickard
21 dealing with the Russian MVD?

22 A. No.

23 Q. Do you know what the Russian MVD is?

24 A. No.

25 Q. Do you recall any discussions with Mr. Pickard

1 that had anything to do with the Russian Mafia
2 and their drug activities?

3 A. There-- there was a discussion I believe we
4 had, or I know we had, about the fact that
5 enforcement was concerned about the opening of
6 the former Soviet block, because it is a rather
7 rich petrochemical area and they have a lot of
8 resources. And, unfortunately, the company--
9 or the country is so poor that they were very
10 motivated by hard currency, that it wouldn't be
11 difficult for somebody with hard currency to go
12 in there and to obtain chemicals which might
13 not otherwise be available just by the fact
14 that you have hard currency money. And I think
15 there was speculation about whether the Russian
16 Mafia might be behind it. But along those
17 terms is what I remember the Russian Mafia
18 being involved in.

19 Q. Do you know if there was any talk about the
20 Russian Mafia being involved in the fentanyl
21 manufacturing going on in Russia?

22 A. I don't-- I don't recall him saying anything
23 along that line, no.

24 Q. In any of your discussions with Mr. Pickard, do
25 you recall information that may have been

1 provided with respect to the use of ephedrine
2 or pseudoephedrine and any changes in the
3 trends of that with manufacturing of meth?

4 A. We may have.

5 Q. And would pseudoephedrine and ephedrine be the
6 term-- be classified as something that's known
7 as a precursor?

8 A. Yes.

9 Q. And as a precursor, pseudoephedrine or
10 ephedrine, what would-- what does that mean in
11 layman's terms?

12 A. Well, ephedrine and pseudoephedrine are
13 essentially one step away from methamphetamine.
14 That's the most popular route, the use of
15 pseudoephedrine at this point in time.
16 Certainly if you could control or regulate
17 those chemicals, they would be very difficult
18 for methamphetamine laboratories to happen.

19 Q. And do you recall any discussions with Mr.
20 Pickard having to deal with lactose and the
21 binder system in the manufacture of any
22 methamphetamine or products?

23 MR. HOUGH: Judge, we'll object to
24 this methamphetamine testimony, it's
25 irrelevant.

1 MR. RORK: Judge, it has to do with
2 the-- towards the end of the question had to do
3 with the synthesis of drugs, what the
4 Government has alleged has been relevant in the
5 entire case, ability to synthesize drugs and
6 make dangerous.

7 MR. HOUGH: Synthesis of
8 methamphetamine is certainly not relative to
9 this case, Judge.

10 THE COURT: Well, let's find out. Do
11 you remember anything about that?

12 THE WITNESS: It-- it could have been
13 a topic, but I don't specifically remember
14 talking to him about it.

15 Q. (BY MR. RORK) Is there any relationship to
16 something that's known as phenyl proplome--
17 propylomonine or something like that. Phenyl--
18 phenyl propanolamine tablets and any synthesis
19 of methamphetamine?

20 A. Not from methamphetamine. Phenyl propanolamine
21 was at one time, starting around 1995 or so, we
22 began to see it show up more in illicit
23 laboratories, methamphetamine labs.
24 Unfortunately, when it's chemically converted
25 in the same manner which the ephedrine or

1 pseudoephedrine is, you get amphetamine instead
2 of methamphetamine.

3 Q. Are you aware or were you aware that Mr.
4 Pickard's policy analysis exercise or his
5 thesis while he was at the John F. Kennedy
6 School of Government where you mailed-- or knew
7 he was at, involved the control of fentanyl,
8 MDMA and LSD laboratories in Russia?

9 A. No.

10 Q. Do you recall any discussions with Mr. Pickard
11 as to whether or not these policy analysis
12 exercise or thesis he was undertaking at the
13 time had been sponsored by anybody at the State
14 Department?

15 A. No.

16 Q. Do you recall receiving in around 1997 a copy
17 of any papers Mr. Pickard forwarded to you
18 representing to be his policy analysis exercise
19 or thesis?

20 A. I never received any other documents from Mr.
21 Pickard, other than the ones he alleged came
22 from Mr. Marquardt.

23 Q. And when you were talking to Mr. Pickard about
24 this Doctor Sorokin, the Russian national
25 forensic chemist, do you recall you contacting

1 the doctor and requesting or asking that Doctor
2 Sorokin send chemical procedures from Russian
3 fentanyl labs to Mr. Pickard?

4 A. Could you rephrase that again, please?

5 Q. Yeah, I'm trying to read my-- do you recall in
6 the contacts that you indicated earlier, there
7 was a referral of Mr. Pickard to a Doctor
8 Sorokin, and you didn't have any means to call
9 him or the telephone number or something?

10 A. That's correct.

11 Q. And then Mr. Pickard a short time later
12 provided you a means or a method in how to
13 contact him. But do you recall any-- giving
14 Doctor Sorokin any information or making any
15 requests for the doctor to send to Mr. Pickard
16 the chemical procedures for Russian-- from
17 Russian fentanyl labs?

18 A. I'm sorry, Mr. Rork. Are you finished with
19 your question?

20 Q. Oh, yes.

21 A. I'm sorry, I was waiting to see if you were
22 collecting thoughts to add on. I never made
23 any direct requests to Mr. Sorokin. As I said
24 at the time, the only contact I had with him
25 was through the mail, and that would take

1 sometimes upwards to three to four months. But
2 I never requested him in any way to act on my
3 behalf or whatever. Any contact or anything he
4 did with Mr. Pickard was up to Mr. Sorokin, it
5 was certainly not at my behest.

6 Q. I understand. I phrased the question wrong.
7 Do you recall Doctor Sorokin ever contacting
8 you and inquiring about whether or not he
9 should send to Mr. Pickard any information on
10 fentanyl labs in Russia?

11 A. No, I-- I don't. Again, the-- the contact with
12 Doctor Sorokin, especially coming from that
13 direction, was very laborious, he couldn't post
14 it within Russia, it would have to come out of
15 country, he didn't have e-mail. It was not a
16 quick means of communication. Anything I got
17 from Doctor Sorokin would usually take upwards
18 to four months from the time it left Moscow
19 until it would hit my desk.

20 Q. And do you recall any discussions with Mr.
21 Pickard by Mr. Pickard to you reference seven
22 or eight laboratories of fentanyl manufacturing
23 Mr. Pickard was looking at in Russia?

24 A. He was probably looking at a couple, at least
25 maybe three or four, which was information I

1 provided him. That was information which
2 Sorokin had published in our CLIC journal.
3 Again, this was at my initial contact with Mr.
4 Pickard that this information was provided.

5 Q. Do you recall Mr. Pickard ever giving you any
6 information in these conversations concerning
7 Mr. Pickard had something ongoing with the
8 Customs Department involving heroin in
9 Afghanistan?

10 A. No.

11 Q. Let me hand you what's been marked as Exhibit
12 P-106 and ask you if you would take a minute to
13 review that and see if any of those items
14 appear to be familiar to you. You don't have
15 to read it out loud or anything, I would just
16 ask that you read it to yourself and see if any
17 of the items contained therein refresh your
18 recollection concerning your contacts with Mr.
19 Pickard.

20 A. These appear to be copies of e-mails from--
21 well, they all seem to be from me to Mr.
22 Pickard, I don't see any of Mr. Pickard's to me
23 here, though.

24 Q. And I don't know any-- anything about
25 computers, but I-- I've been advised that there

1 may be indications on there where there are
2 arrows and arrows might be a question and then
3 a non-arrow might be a response, if that
4 assists you in your questions, I'm not sure.

5 A. The arrows typically indicate that that is
6 material from an e-mail which you're replying
7 to. And this is material that, for example,
8 Mr. Pickard would have had in his e-mail.
9 However, unlike a lot of people, I edit my
10 responses so that I cut out all the superfluous
11 material. And if there's a question about one
12 thing, I will leave that particular comment in
13 so that they know what I'm responding to. So
14 I'm sure there's a lot more in here rather
15 than-- from him to me.

16 Q. And even though there may be a lot more in
17 there from him to you, are you aware that at
18 the storage locker in Boston where the Exhibit
19 549 of the Government was presented and these
20 other items I've handed you, we can only print
21 out evidently what can be printed out from the
22 copies given to us. And in reviewing that
23 docket, P-106, do you know whether or not in
24 reviewing those items in there, does it appear
25 to be e-mails and replies from you to Mr.

1 Pickard and Mr. Pickard's e-mails or replies to
2 you or what does it appear?

3 A. Well, as I said, these are all e-mails from me
4 to Mr. Pickard. It doesn't show his side of
5 what sparked the conversation, unless I'm
6 directly responding to a particular piece of--
7 of his message. All of these e-mail messages
8 that I received from him and back and forth,
9 they were deleted and I got rid of them, you
10 know, shortly after I read them and had any use
11 for them. I certainly didn't have any reason
12 whatsoever to-- to save copies.

13 Q. I understand.

14 A. Knowing that, I can't validate these as-- as
15 being e-mails from me, because it is pretty
16 easy to-- to doctor these.

17 Q. Notwithstanding that fact, does there appear to
18 be dates and time periods contained on either
19 the beginning to the end-- and these are a tape
20 the Government gave me, so does there-- or a
21 disk. Does there appear to be on that piece of
22 paper printout any dates that correspond to the
23 times of forwarding of any e-mails that would
24 assist you in refreshing your recollection
25 regarding any conversations you had with Mr.