

1 Pickard in 1995?

2 MR. HOUGH: Judge, we'll object.
3 This is inappropriate. The witness has
4 testified he deleted whatever e-mails Mr.
5 Pickard sent. He has testified he cannot
6 validate these e-mails and he has testified
7 that e-mails, to his knowledge, are easily
8 manipulated. Thus, these documents would not
9 be proper to refresh his recollection with.

10 MR. RORK: Well, Judge, just as the
11 e-mails the lady from out in California, her
12 name was Elaine, was brought in, she made the
13 same representations, I believe. Any objection
14 by the Government may go to the weight. I'm
15 just asking him if the documents-- he indicated
16 they did appear to be e-mails of something from
17 him or from Pickard to him. And these are
18 documents that have been produced from items
19 given to me by the Government that were seized.

20 THE COURT: I'm going to sustain the
21 objection.

22 Q. (BY MR. RORK) So does-- after reviewing that
23 document, then, do you have any independent
24 recollection of any contacts with Mr. Pickard
25 as to the nature and length of those that

1 happened?

2 MR. HOUGH: Objection, cumulative.

3 THE COURT: Well, go ahead and
4 answer.

5 A. I'm not sure what you're asking, Mr. Rork.

6 Q. (BY MR. RORK) Well, you indicated I believe on
7 your testimony that you thought that there
8 might have been just one or two contacts with
9 Mr. Pickard. And I believe in your testimony
10 you-- the discussions involved various subject
11 matters. And at least on one occasion, you
12 recall some contact with Mr. Pickard while you
13 were at a-- an event in Las Vegas, Nevada,
14 dealing with methamphetamines. And there was
15 an agent there that you were going to try and
16 get word to or something. Do you know when
17 that event in Las Vegas occurred in relation to
18 when you first started talking to Mr. Pickard?

19 A. No, I don't. I mean, not offhand, I would have
20 to go back and look at documents and stuff I've
21 had in the past, but I-- I don't know. There
22 was a period of about four years or so which I
23 taught for CLIA, including Edmonton, Alberta,
24 Canada, Las Vegas twice. I don't recall--
25 there was one other place, I believe, but I

1 don't know what time, where or anything that
2 they occurred.

3 The one specific e-mail that I remember
4 receiving from Mr. Pickard, which doesn't
5 appear to be represented in here in any way,
6 shape or form, was a comment by Mr. Pickard
7 that he had been out on the street working a
8 needle exchange program in Boston for several
9 days and about how bitterly cold it was, but I
10 don't see that one in here anywhere.

11 Q. And with respect to the needle exchange in
12 Boston, did he indicate to you in the e-mail
13 what he was doing with the needle exchange or
14 what was involved with that?

15 A. No, just that he had been out of the office for
16 a while, as if maybe I had been trying to get
17 ahold of him, and he was just trying to explain
18 his whereabouts.

19 Q. With respect to Item No. P-106, can you
20 indicate whether or not the e-mail address
21 that's depicted on there for you appears to
22 be-- purports to be your e-mail address in-- in
23 any time period?

24 A. That is certainly my e-mail address up until
25 about four years ago.

1 Q. So that would have been 1999. So do you know
2 before 1999 how long you had an e-mail address
3 that's identical to the one in that document,
4 P-106?

5 A. I don't recall.

6 Q. Could it have been for more than five years?

7 A. Oh, it probably-- since about 1990, 1991,
8 somewhere in there.

9 Q. And do you know whether or not your e-mail
10 address would have been contained in any of the
11 documents that may have been published or
12 contained in the CLIC journals?

13 A. Absolutely.

14 MR. RORK: Judge, in order to
15 expedite and finish my cross examination, I
16 would like to ask for the afternoon break at
17 this time so I could have the witness review
18 this item, it's about six pages, and then see
19 if he can determine if there's anything in
20 there he recalls or recollects and then that
21 would facilitate concluding my cross-- my
22 direct.

23 THE COURT: That's agreeable to the
24 Court. Ladies and gentlemen, let's take a
25 15-minute break at this time and then we'll

1 come back.

2 (THEREUPON, a recess was had;
3 WHEREUPON, the following proceedings
4 were held outside of the presence of the
5 jury).

6 THE COURT: All right. We have
7 something to discuss with the Court?

8 MR. HOUGH: Yes, Judge. As to the
9 Defense Exhibit 106, the Court will recall and
10 is represented that it either came out of the
11 Boston storage locker or off of a computer.
12 And the Court sustained an objection earlier
13 regarding inquiry because the witness testified
14 that he could not validate what these purported
15 to be e-mails were because he deleted all of
16 Mr. Pickard's e-mails to him.

17 During the recess, we've looked at that
18 and can tell the Court as an officer
19 unequivocally that document did not come out of
20 the Boston lockers and it did not come off the
21 floppy disks that were provided to defense
22 counsel that came from Mr. Pickard's computer.
23 Given that and the fact that the Court
24 previously sustained the objection relative to
25 further inquiry of 106, we would ask that the

1 Court admonish counsel to move on and not make
2 further inquiry before the jury relative to
3 that document.

4 MR. RORK: And, Judge, if the Court
5 please. With respect to the Exhibit P-106, I
6 can advise Your Honor that further inquiry
7 needs to be made. The witness did indicate
8 that he-- something about there's no way to
9 verify that items can't be-- I don't know what
10 it was, items can't be changed or done
11 something to, I don't know about computers, but
12 that it was his e-mail address.

13 And the matters-- I have asked him over
14 the break if he would review the subject
15 matters on the e-mails to determine if this
16 subject matter was consistent with anything he
17 recalled. And what I can advise you, Judge,
18 the questions I would propound of the witness
19 would be, for instance, he's discussed that Mr.
20 Pickard may have inquired with him about
21 submitting materials to the CLIC. There's an
22 e-mail that appears to be-- but what I
23 understand is an e-mail from Mr. Pickard to Mr.
24 Ely, and then Mr. Ely's reply is posted, which
25 would indicate, "you are certainly invited to

1 submit to the journal. All manuscripts are
2 sent out for editorial review, and it would be
3 up to the reviewers as to whether the
4 manuscript would benefit the journal." That's
5 consistent with his testimony.

6 There are other e-mails about sending the
7 video and they go from January, 1995, Your
8 Honor, to November of 1995 in an eleven-month
9 time period. There are other e-mails that are
10 consistent with Mr. Pickard sending information
11 to Mr. Ely regarding the e-mail address or
12 means to contact Doctor Sorokin. And there
13 would be a reply by Mr. Pickard and an answer
14 by Mr. Ely.

15 There are e-mails that indicate that Mr.
16 Pickard with respect to the mailing of
17 matters-- of documents to Mr. Ely, there's
18 e-mails that indicate Mr. Pickard sent
19 Marquardt letters, that's in some documents,
20 50c through i, and that Mr. Ely reviewed them
21 and indicated they would be interesting
22 reading.

23 There are e-mails in the P-106 that
24 purport to be indications that the majority
25 portion of Mr. Marquardt's laboratory items,

1 glassware, materials were not discovered in the
2 Kansas raid. And again, this is consistent
3 with this witness' testimony. He's indicated
4 that the majority of the items weren't found--
5 of Marquardt weren't found in the Kansas raid.
6 There is an inquiry reference this-- Mr. Ely
7 contacting a couple of chemists from the
8 Chicago lab regarding what their opinions are
9 about the uncovered-- or excuse me,
10 undiscovered glassware stock. I think that's
11 consistent. The witness testified something
12 about he contacted some people in Chicago or
13 two other chemists.

14 The-- some information in the e-mails and
15 a reply that talks about that it's illegal for
16 Mr. Pickard to possess some material and
17 sending it off to me or anyone else, not sure
18 how to handle this. I would recommend
19 contacting local narcotic folks. And then it
20 talks about it would depend on where the agency
21 would send the sample. Hopefully, since no
22 prosecution would rise from it, perhaps send it
23 to Henderson, the Massachusetts State Police
24 Lab in Boston is too limited, you might talk to
25 the tox people who worked for Marquardt or a

1 private lab with good credentials is Jason
2 Freed, and then it gives Jason Freed and his
3 address. That's consistent with what the
4 witness testified to, Judge.

5 And the last two things are, there's-- it
6 appears to be an inquiry from Mr. Pickard about
7 the follow-up on Marquardt's statement that
8 substantial equipment and chemicals remain
9 safely hidden. And then there appears to be a
10 reply by Mr. Ely that, "I attended an agent's
11 conference in Las Vegas," and that's in October
12 of 1995, the purported date, "where I told a
13 couple people at the conference about it, but
14 no one at this time has beaten down a path to
15 my door, so the agent mustn't be interested and
16 advised that there's more material on new
17 synthetic threats from the Russian underground
18 and the Moscow news, send some Lexis material."

19 The last date indicates there's something
20 about Mr. Pickard getting into the Mohammed
21 Akbar Afghan case, Customs enforcement, does
22 DEA have any interest in this case. And
23 there's an indication he should contact the
24 local DEA people. There's other conversation
25 about contacts. And the reason I asked the

1 questions of this witness was to see if there's
2 a lot of subject matter in P-106 that relates
3 to conversations between him and Mr. Pickard
4 for the time period of January through
5 November, 1995.

6 THE COURT: You've given me about 25
7 issues there. Are you asking to admit all of
8 those things? I-- you've lost me by going on
9 and on and on and has the witness now
10 discovered that he has connections with all of
11 these things after we've gone through this for
12 three hours?

13 MR. RORK: Well, Judge, what I was
14 attempting to show you from 3:07 until 3:14 was
15 that the information contained in P-106
16 corroborates exactly what I just said for what
17 this witness has testified to. I'm not
18 offering it now, I was asking him to look at
19 it, to compare whether the subject matter of
20 the contents are consistent with what he
21 testified to. And so the Government's
22 objection is that I can't ask him any more
23 questions about it. That's why I understood we
24 were up here.

25 MR. HOUGH: Judge, you sustained an

1 objection relative to that document prior to
2 the break. Consequently, it is our position
3 that further inquiry relative to that document
4 would be inappropriate. And it is our request
5 that counsel be admonished to move on away from
6 the document. Each of the topics that he has
7 just represented to you that he was wanting to
8 make inquiry about were made prior to the
9 break.

10 MR. RORK: Judge, the--

11 MR. HOUGH: Consequently, further
12 inquiry on these topics is cumulative and any
13 inquiry regarding that document would be
14 inadmissible because you, Judge, sustained an
15 objection relative to that document prior to
16 the break.

17 MR. RORK: Judge, if the Government
18 has no objection to the introduction of the
19 document, then, no, I would have no further
20 questions of the witness. If the Government is
21 objecting to the document in order to establish
22 the foundation, I just explained to you all of
23 the circumstances within the document that are
24 consistent with this witness' testimony. The
25 fact that a witness indicates that he can't say

1 this is the precise, exact document is one
2 thing, Judge, but to allow the witness to
3 identify whether the subject matter--

4 THE COURT: Well, has he done that?
5 That's my question.

6 MR. RORK: Well--

7 THE COURT: I sat here and listened
8 and listened and didn't hear all of that, and
9 now this is all coming from you and--

10 MR. RORK: It's coming from me
11 paraphrasing the testimony that he gave before
12 he was handed the document to read. That's
13 what I was telling you, to sum it up. Now, I
14 asked him before the break to read it and see
15 if it was consistent with his testimony, and I
16 was advised in the presence of Mr. Hough, he
17 indicated to him you had sustained the
18 objection, he didn't have to read it. And so
19 then I-- that wasn't done so I left the room.
20 That's why it hasn't been done.

21 THE COURT: Now, tell me again, where
22 did this document come from?

23 MR. RORK: Judge, this--

24 THE COURT: I don't know whether it
25 was found up in Boston, whether it was found--

1 just mailed in by this gentleman or not.

2 MR. RORK: Judge, this is a copy of
3 e-mails where there are disks in the Planet
4 storage locker, that's the name of it, in
5 Boston. This is a copy of e-mails from Pickard
6 while he's at Harvard to Mr. Ely while he is at
7 the e-mail address that Mr. Ely said is his
8 e-mail address.

9 My copy came from Mr. Pickard, provided
10 me a copy that was provided to him from copies
11 of the Harvard, evidently, disk. And I've been
12 told that there are similar disks in the Boston
13 locker - we don't have them, they won't let us
14 use the computers here - that would have this
15 information on it. The contents of it is what
16 we're asking him to authenticate at this point
17 in time.

18 MR. HOUGH: The witness has already
19 testified he cannot authenticate the comments,
20 for one. For two, the Government has not
21 duplicated any of the information on the disks
22 out of the Boston locker. And three, that
23 document was not in the Boston locker.

24 MR. RORK: And--

25 THE COURT: I'm going to continue to

1 sustain the objection to that-- to that
2 document.

3 MR. RORK: Well, Judge, then can I
4 get the foundation out of the presence of the
5 jury? Their objection is that they want to
6 object to the questions in front of the jury.
7 And in order to question this witness while
8 he's here, can I then get the questions out of
9 the presence of the jury so that we won't have
10 any more questions?

11 THE COURT: Well, go ahead and-- I
12 will allow you to do that, but let's-- let's be
13 more precise on these things, please.

14 EXAMINATION OUTSIDE OF THE PRESENCE OF THE JURY
15 OF ROGER ELY

16 BY MR. RORK:

17 Q. Sir, you have in front of you what's been
18 marked as P-106; is that correct?

19 A. That's correct.

20 Q. And I would ask you to look at the-- there
21 appears to be on Page 23, the page that's
22 numbered there at the top, an entry of January
23 16, 1995, and it appears to be from you to
24 William Pickard. And then down at the bottom
25 there's an answer; is that correct?

1 A. That's correct.

2 Q. And does that answer appear to be consistent
3 with what you've indicated previously were
4 contact numbers for Mr. Pickard to call you and
5 your work hours? I'm on Page 23, the front
6 page.

7 MR. RORK: I guess if I could stand
8 by the witness, Judge.

9 THE COURT: Yes, at any time.

10 A. No-- yeah, yeah, phone number, yes, at the top.

11 Q. (BY MR. RORK) All right. And then as we move
12 down to the next one, it appears to be
13 something by January 25. And then down at the
14 bottom there appears to be something to Roger
15 from you, and then a reply from you. Does that
16 reply appear to be consistent with what you
17 testified to?

18 A. It seems-- again, I-- I don't know. It appears
19 to be, appears to be something that I would
20 have said, but--

21 Q. I'm not asking if it's true, it just appears is
22 what we're asking. If we can go to the next
23 page, 24, and there appears to be a date of
24 January 25, '95 at the top. And down at the
25 bottom, there's-- appears to be a request from

1 Leonard to you about your feelings on
2 submitting an article to this CLIC on Marquardt
3 and events in Russia, and then there's--
4 appears a response from you similar to your
5 testimony, "you can submit it, it can be sent
6 out for editorial review, and it would be up to
7 the reviewers whether the manuscript would
8 benefit the journal."

9 A. Yeah, I'm-- maybe I don't understand. I've
10 already testified to that, why do I have to
11 confirm it in these e-mails?

12 Q. Well, because I'm asking this document to be
13 identified by you, if the subject matter is
14 consistent in the e-mails with what your
15 testimony is.

16 A. Is this different from what I've testified to?

17 Q. It's a subject matter for the purpose of the
18 Court's inquiry into the admission of the
19 e-mails. The next inquiry is in February of
20 '95 and-- and we have no problem excising
21 e-mails that-- conversation that doesn't have
22 anything to do with your testimony. But if we
23 go to the top of Page 25, part of your response
24 deals with that methcathinone information you
25 talked about. Correct?

- 1 A. Yes. The comments says, "I haven't read the
2 contents of methcathinone PCF, but will
3 download it and browse it from there." And I
4 never downloaded it.
- 5 Q. And the next inquiry down at the bottom of that
6 page from March of '95. I'm on Page 25, in
7 that area, appears to be a reply from you
8 regarding Mr. Pickard should have received the
9 Marquardt video and you hope he gets a chance
10 to review it, or words to that effect.
11 Correct?
- 12 A. To that effect, yes.
- 13 Q. And that's consistent with your testimony
14 previously?
- 15 A. Yes.
- 16 Q. If we go down to the bottom of Page 25, it
17 appears to be a response of Mr. Pickard to you
18 and at the top of the Page 26-- oops, wait a
19 minute. Appears to be information concerning
20 that Doctor Sorokin. Correct?
- 21 A. Yes.
- 22 Q. And is that consistent with what you've
23 indicated in your testimony?
- 24 A. As far as I recall, yes.
- 25 Q. And then in the middle of that page, there

1 appears to be a March 20, 1995 date. And down
2 at the bottom appears to be a response from you
3 to something from Pickard that if it isn't too
4 much trouble, you would like a copy of the
5 file. I was imagining the file was inches.
6 Would that appear to be consistent with what
7 you've indicated?

8 A. I don't know what I'm-- I don't know what I'm
9 asking for a copy of, so--

10 Q. But thanks for corrections on Sorokin's numbers
11 appear consistent with your testimony?

12 A. I believe so.

13 Q. And then if we go over to Page 27, at the
14 bottom of Page 27 it talks about Marquardt's
15 second letter arrived, and I'm just going to
16 the relevant portions of your testimony, and
17 package via priority mail for the 28th. And
18 then there's further conversation on the top of
19 Page 28 concerning the CLIC submission of
20 synthetic approaches by Marquardt and the other
21 individuals, San Diego Mexican nationals and
22 the like that you were talking about. Correct?

23 A. Yes, he was interested in doing a submission to
24 the CLIC journal.

25 Q. And the next thing in there appears to be April

1 of '95, in the middle, and it appears to be a
2 reply from you, "very interesting sufficient,
3 especially the major portion of his glassware
4 and materials were not discovered in the Kansas
5 raid. I looked at it briefly but will savor it
6 for a few days. Thanks." Is that consistent
7 with your testimony?

8 A. I believe so.

9 Q. And then we go over to Page 29, which is at the
10 top.

11 A. Actually, the-- the difference is I don't
12 recall necessarily reading the stockpile. I
13 remember Leonard telling me about the stockpile
14 of the glassware materials, I don't remember
15 offhand reading it.

16 Q. And then we go to the top of Page 29, and there
17 appears to be conversation about the
18 undiscovered glassware stock and-- from Mr.
19 Pickard and information from you confirming
20 Marquardt's talking to him or whatever and
21 talking to a couple of chemists in the Chicago
22 lab about their opinions. Correct?

23 A. Yeah.

24 Q. And if we go down farther in that e-mail of
25 April of '95, there appears to be some

1 conversation about various drugs and
2 information consistent with your prior
3 testimony. Correct?

4 A. Yes.

5 Q. And then if we go to the bottom of Page 29 and
6 the top of Page 30. Sorry, it's back here.
7 There appears to be from May of '95 a reply by
8 you about Pickard, illegal to possess
9 something. And the top of Page 30, information
10 for him to contact local narcotic folks, giving
11 his credentials, current not former, and
12 advising him different methods to have
13 something analyzed and giving the name of the
14 private lab, does it not?

15 A. Yes.

16 Q. And down at the bottom of that document there's
17 an October, '95 response from either Pickard or
18 to you of October of '95 concerning follow-up
19 on Marquardt's statement of substantial
20 equipment and chemicals remain safely hidden
21 and a reply that you had recently taught an
22 agents conference in Vegas where the lead agent
23 was there to talk about the case. The
24 information that was consistent with you giving
25 a demonstration to agents about how to make

1 hands-on meth, information that you had told a
2 couple of people at the conference about Mr.
3 Pickard-- or who knew the agent, but no one is
4 beating down a door to your lab, so they
5 mustn't be interested; is that correct?

6 A. Uh-huh, yes.

7 Q. And then it's consistent with the other
8 information about Mr. Pickard providing you
9 data on the Lexis retrievals on Russian
10 underground, is it not?

11 A. It is consistent with his offer--

12 Q. Offer.

13 A. -- to provide those materials.

14 Q. Okay. And then on the top of Page 31-- and
15 again, we would delete items that don't refer
16 to your testimony, but in the relevant portion
17 at the top of Page 31, there is information
18 concerning fentanyl route posted on the net
19 some months ago and mentioned that-- Mohammed
20 Akbar and Afghan figures and whether or not DEA
21 has an interest in that case, is there not?

22 A. That's what Mr. Pickard wrote.

23 Q. All right. And the rest we can delete, things
24 that don't apply. Down at the bottom of 31,
25 there is an information by-- it looks like

1 November of '95, this is the last contact. And
2 relevant portions of that paragraph deal with
3 fentanyl, cath or other synthetics and fentanyl
4 MDMA compounds in Russia, some type of-- the
5 narcotic or precursor information, Russian
6 Mafia, continuing onto the last page about the
7 cell phones and the expensive services, that
8 only Roger can provide it. And then testimony
9 about the ephedrine, pseudoephedrine--
10 pseudoephedrine and the phenyl propanolamine
11 tablets, consistent with what you testified, is
12 it not?

13 A. I believe it is, yes.

14 MR. RORK: Okay. And, Judge, that
15 was the nature of the inquiry that I would ask
16 outside the presence of the jury.

17 THE COURT: Well, you've now said yes
18 to every question he asked you. So it's my
19 understanding that you seem to be saying that
20 you had discussions with Mr. Pickard on all of
21 those things and-- but you can't exactly
22 identify the e-mail.

23 THE WITNESS: That's correct, Your
24 Honor.

25 THE COURT: Is that what you're

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saying?

THE WITNESS: Absolutely.

THE COURT: And--

MR. RORK: And that's fine, Judge, we can take that issue up later and move on, I just wanted to get it done so the witness can be done today.

THE COURT: All right.

MR. HOUGH: Judge, may I make one inquiry?

THE COURT: Yes.

EXAMINATION OUTSIDE OF THE PRESENCE OF THE JURY
OF ROGER ELY

BY MR. HOUGH:

Q. Sir, I thought your prior testimony was that Mr. Pickard did not talk to you about anyone named Akbar or Afghanistan?

A. I don't recall him in our conversations regarding, yeah, Mohammed Akbar. I don't recall that.

MR. RORK: Well, Judge, that's not a conversation, that's an e-mail, so--

THE COURT: All right. Well, I'll take this under advisement--

MR. RORK: Thank you.

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THE COURT: -- still and-- but let's bring the jury and try to--

MR. HOUGH: Judge, for-- one point of clarification.

THE COURT: Yes.

Q. (BY MR. HOUGH) Sir, do you recall ever getting an e-mail from Mr. Pickard or any correspondence about Akbar or Afghanistan?

A. I don't recall.

THE COURT: All right. Would you bring the jury in, please.

(THEREUPON, the following proceedings were held in the presence of the jury).

THE COURT: All right, let's be seated and we'll proceed.

MR. RORK: Sir, with respect to the other matters that we've just concluded, I would have no further questions of you at this time. Mr. Bennett or Mr. Hough may.

THE COURT: Mr. Bennett.

MR. BENNETT: I don't believe I have any questions, Your Honor.

THE COURT: All right, Mr. Hough.

CROSS EXAMINATION

1 BY MR. HOUGH:

2 Q. Sir, it's my understanding that as a forensic
3 chemist that you have no authority to direct
4 anyone in any type of investigation; is that
5 correct?

6 A. That's correct.

7 Q. It's my understanding that you have not and did
8 not in this instance grant anyone any authority
9 to engage themselves in any type of criminal
10 activity; is that correct?

11 A. That's correct.

12 MR. RORK: Well, Your Honor, if the
13 Court please. I would object to that question,
14 we've never asked this agent if he had, so I
15 would object to the nature of that for the
16 relevancy, Your Honor, claiming that he had
17 authorized any illegal activity.

18 THE COURT: I-- I'm going to overrule
19 the objection. You may go ahead.

20 MR. HOUGH: Thank you.

21 Q. (BY MR. HOUGH) It's my understanding of your
22 testimony, sir, that you never directed Mr.
23 Pickard to do anything; is that correct?

24 A. That's correct.

25 Q. It's my understanding that you have met Mr.

1 Pickard once, and that was at the 1998 American
2 Academy of Forensic Scientists meeting in San
3 Francisco?

4 A. That was the only face-to-face meeting I've
5 ever had with Mr. Pickard.

6 Q. Would you describe that meeting for us, please?

7 A. My meeting of him--

8 Q. Please.

9 A. -- Mr. Hough? We were on a break just after
10 the-- my presentation of my training workshop.
11 I was standing with a group of about two or
12 three colleagues chatting. My wife, who was
13 volunteering with work at the meeting at that
14 particular time, walked up with a gentleman and
15 a-- and a woman. She then proceeded to
16 introduce me to Mr. Leonard Pickard. I greeted
17 him, I shook his hand, I introduced him to the
18 other two or three people who were standing
19 alongside there with me. We had a brief
20 discussion. The meeting was about to start up
21 again. Mr. Pickard indicated that he would
22 like to get together and talk with me later on
23 in the week at the meeting; however, we never
24 crossed paths.

25 Q. Did Mr. Pickard ever produce any documents to

1 you that he represented were his work?

2 A. No.

3 Q. Did Mr. Pickard ever inquire of you about
4 possible projects involving predicting new
5 drugs of abuse?

6 A. I-- I don't recall that he did.

7 Q. Did you suggest fentanyl to the Defendant, Mr.
8 Pickard, as any type of a choice or a topic for
9 him to look into?

10 A. No.

11 Q. Were reports on any types of matters that Mr.
12 Pickard represented that he had done ever
13 forwarded to you for review and for comment?

14 A. No. The only thing that Mr. Pickard forwarded
15 to me was a copy of a document which he
16 represented having come from Mr. Marquardt.

17 Q. Did you ever represent to the Defendant that
18 you had actually contacted the case agent, but
19 that the case agent told you he was not
20 interested in following up?

21 A. No.

22 Q. Did Mr. Pickard ever file a paper with you on
23 any type of a topic?

24 A. No.

25 Q. During your brief encounter with the Defendant

1 in '98, did you discuss any specific drugs or
2 topics or research that you recall?

3 A. This was at the American Academy meeting?

4 Q. Yes.

5 A. Again, the time was very short, I was shocked
6 to have met him face-to-face. I-- I seem to
7 remember at that time he may have made mention
8 about tracking devices for chemical containers
9 offhand and he had an interest in it. And then
10 that was about it.

11 Q. And would someone, based on your training and
12 experience, that had an interest on tracking
13 devices for precursor chemicals, in turn,
14 scrape the labels off of such chemicals if they
15 were in their possession illegally? Would that
16 make sense to you?

17 MR. RORK: Well, Judge, I'm going to
18 object. That assumes a fact not in evidence.
19 There's no evidence or indication of that.

20 MR. HOUGH: Well, Judge, there is.
21 In fact, Mr. Savinelli testified that the
22 Defendant Pickard scraped the labels off of the
23 containers of precursor chemicals that he
24 ordered through Native Scents.

25 MR. RORK: And, Judge, that's what

1 Mr. Savinelli may have said and that's the
2 weight for the jury to decide, but it's not for
3 this witness to decide in relation to what time
4 period, when was it with Mr. Pickard, when was
5 this that Mr. Savinelli said.

6 THE COURT: Well, overruled. Go
7 ahead.

8 A. It's a common practice in clandestine
9 laboratories, especially methamphetamine
10 laboratories, that labels and other identifying
11 features for chemical containers are removed to
12 protect the individuals usually distributing
13 those chemicals from any kind of exposure to
14 law enforcement.

15 Q. (BY MR. HOUGH) Would it be true of clandestine
16 labs generally--

17 A. Yes.

18 Q. -- not just meth?

19 A. The predominance of what we see is
20 methamphetamine. I have heard lectures from
21 colleagues where it's also been done with other
22 drugs.

23 Q. And you indicated that Sasha Shulgin first
24 contacted you and told you that there was an
25 individual that he wanted you to speak with or

1 if you would be interested in speaking with.

2 Do you recall testifying to that effect?

3 MR. RORK: Your Honor, that misstates
4 the fact. There was a Doctor Sasha Shulgin
5 that had contacted him.

6 MR. HOUGH: Didn't I say Sasha
7 Shulgin??

8 MR. RORK: Didn't say the doctor
9 part, that's what I was indicating.

10 THE COURT: Well, state your
11 question, again, please.

12 Q. (BY MR. HOUGH) Do you recall your testimony
13 about Sasha Shulgin first contacting you
14 generally about an individual wanting to gain
15 some information and would you speak with him?

16 A. Yes, I do remember getting an e-mail from
17 Doctor Shulgin. He goes by Sasha.

18 Q. Okay. They're one in the same?

19 A. They are one in the same.

20 Q. And tell us about that.

21 A. Again, Doctor Shulgin contacted me via e-mail
22 indicating that there was a student at the
23 Harvard school, JFK School of Government, who
24 was doing a research project on the use of the
25 Internet for the possible obtaining of illicit

1 chemicals to manufacture controlled substances,
2 and the passing and propagation of recipes and
3 methods to make these drugs and also possibly
4 the trafficking in those substances using the
5 Internet.

6 Doctor Shulgin was aware of my past and
7 experience in looking at those types of things
8 through websites and bulletin board chatter and
9 things and asked if it would be okay for this
10 particular individual to contact me and we
11 could discuss it for his project.

12 Q. What specifically did he tell you about the
13 individual at that point in time?

14 A. Nothing that-- I believe he gave me his name
15 and the fact that he was at the JFK School of
16 Government at Harvard.

17 Q. And the name he gave you was what?

18 A. Leonard Pickard.

19 Q. Did that name mean anything at all to you at
20 the time?

21 A. No, it didn't.

22 Q. And then I believe you testified that it was
23 shortly thereafter that Mr. Pickard actually
24 contacted you; is that correct?

25 A. I seem to remember it was within a day or two

1 of Doctor Shulgin's e-mail that Mr. Pickard
2 contacted me by telephone.

3 Q. And at that point in time, as I understand your
4 testimony, that Mr. Pickard or the individual
5 that represented themselves to be Mr. Pickard
6 had in their mind the topic of fentanyl; is
7 that correct?

8 A. I don't recall-- I don't recall fentanyl being
9 a hard topic at the time of our telephone
10 conversation. The conversation started with a
11 description and some discussion about the use
12 and potential of the Internet for doing these
13 kinds of transactions or discussions using
14 different types of encrypted programs to
15 communicate to circumvent law enforcement
16 surveillance. And somehow we arrived upon the
17 context of fentanyl. And from there, it went
18 into the Marquardt lab, into the Russian labs
19 that they were seeing at the time. I don't
20 recall that he specifically had fentanyl on the
21 topic when we first talked. And that certainly
22 wasn't represented to me, I believe, in Doctor
23 Shulgin's e-mail. It was just a general use of
24 the Internet to further those activities, not
25 specifically for fentanyl.

1 Q. And who was it that, if you recall, brought up
2 the topic of fentanyl?

3 A. I don't recall offhand who-- whether it was
4 myself or whether it was him. I do know that
5 when fentanyl was mentioned, he had made some
6 kind of a comment that there hadn't been a big
7 fentanyl lab seizure in a while, and that's
8 when I brought up the Marquardt lab, which had
9 happened about two or three years prior to
10 that. But I don't know whether I said fentanyl
11 first or if he said it.

12 Q. If anyone knew much about fentanyl at that
13 point in time, based on your training and
14 experience, would it stand to reason that they
15 would have had at least some familiarity with
16 the Marquardt matter?

17 A. Yes, absolutely.

18 Q. Shortly after this-- and how long did this
19 telephone call last, if you recall?

20 A. I would say probably around 20 minutes maybe,
21 30 minutes.

22 Q. And after that telephone call, sometime shortly
23 thereafter did you again have a conversation
24 with Mr. Shulgin?

25 A. Yes, I did.

1 Q. And did you confirm or was there a discussion
2 about you having been contacted by Mr. Pickard?

3 A. Yes, there was.

4 Q. Tell us about that.

5 A. I was out at Doctor Shulgin's residence
6 visiting and he asked me if Mr. Pickard had
7 contacted me pursuant to his request, and I
8 indicated that yes, he had. And he asked me,
9 he said, "Well, you do know about Leonard don't
10 you?" And I said, "No, I don't know about
11 Leonard." And he said, "Well, Leonard is the
12 individual who was arrested and taken out of
13 the big LSD lab that we had in Mountain View,
14 California back around '88 or '89." And that
15 was the first time that I became aware of who
16 Leonard Pickard really was.

17 Q. After obtaining that information, did your
18 posture relative to providing any information
19 to Mr. Pickard change?

20 A. Yes.

21 Q. Describe that.

22 A. I became more cautious about-- trying to be
23 more cautious about my dealings. I dealt
24 specifically with things which were a matter of
25 public knowledge. At the time I requested a

1 meeting with Special Agent Art Hubbard out of
2 our San Francisco field division. Arthur was
3 the lead agent on the LSD task force that we
4 had in San Francisco during that time, and I
5 asked him specifically about Leonard and told
6 him that Leonard had been in contact with me.
7 Agent Hubbard cautioned me about my dealings
8 with Mr. Pickard.

9 After that-- and I-- I never really
10 reached out to Leonard. Any time I ever heard
11 from Leonard, he was always either calling me
12 or e-mailing me for information or to drop
13 names or to pass on projects or whatever that
14 he thought should be looked into.

15 Q. And did you ever pass on projects?

16 A. No.

17 Q. How would you characterize your side of the
18 conversations, whether they be either by e-mail
19 or telephone with Mr. Pickard after you found
20 out about his involvement in the Mountain View
21 matter?

22 A. I would characterize them as-- as polite, some
23 information was shared. But, again, these were
24 things which were in the public domain.

25 Q. And after obtaining the information from Mr.

1 Shulgin, as you have just testified to, at that
2 point in time did you view your conversation
3 with Mr. Pickard earlier about Russia and
4 Russian involvement in drug trafficking any
5 differently?

6 A. Yes.

7 Q. Tell us about that.

8 A. Well, I think I alluded to it earlier, that I
9 had made the comment to Mr. Pickard prior to
10 knowing about his history and his past the fact
11 that hard currency can get you just about
12 anything you want in the former Soviet
13 Republics. And the first thought that came
14 through my mind is, great, he's probably out
15 exploring a new source or sources, cultivating
16 sources for chemicals that are difficult to
17 obtain which he could obtain in those areas.

18 Q. Such as ergotamine tartrate?

19 MR. RORK: Well, Judge, I, object
20 number one, it's speculation. Number two,
21 there's no foundation that Russia is a
22 manufacturer of ergoto-tartrate or anything
23 else. I object to the foundation and form of
24 the-- of what he thought after he asked the
25 question.

1 MR. HOUGH: Judge, the foundation was
2 established in the direct examination, the man
3 being the senior forensic chemist with the DEA
4 lab.

5 THE COURT: Well, I'm going to
6 sustain the objection to the last thing you
7 threw in there. That didn't come from him.
8 And so you may proceed.

9 Q. (BY MR. HOUGH) Based on your training and
10 experience, are you familiar with ergotamine
11 tartrate?

12 A. A little bit, yes.

13 Q. Okay. And you're familiar that it can be used
14 as a precursor for LSD?

15 A. That's correct.

16 Q. And based upon your training and experience,
17 are you aware that the former Soviet block
18 would be a potential source for ergotamine
19 tartrate or for ergotamine alkaloids?

20 A. Yes.

21 Q. And is that the reason for the concern that you
22 testified to just moments ago?

23 A. Certainly. It didn't only extend to
24 ergotamine, it extended to a whole Pandora's
25 box of other types of substances, especially

1 along the lines of fentanyl. We're examining
2 the fentanyl practices of illicit labs in a
3 particular country and learning about the
4 mechanisms in which those people are operating.
5 It can certainly be used to one own's benefit
6 if they decided to do something like that. It
7 was an unfortunate side effect of my
8 conversation with him.

9 Q. During your conversations with Mr. Pickard, did
10 he ever have what you would consider to be a
11 direct target of an individual or a topic to
12 research?

13 A. Not that I really ever saw. He had perhaps two
14 or three different types of projects that he
15 seemed to be working on, or he would work on
16 one for a little bit and then move on to
17 another one. And certainly I never saw any of
18 the fruits of his labors on any of those
19 projects.

20 Q. Now, you were asked on direct examination
21 earlier about methcathinone and Mr. Pickard
22 representing to you that he had presented a
23 paper relevant to methcathinone. Do you recall
24 being asked that earlier?

25 A. Yes, I do.

1 Q. You indicated that you were surprised that they
2 would allow that?

3 A. That's correct.

4 Q. Why?

5 A. Because I'm sure that he would not have been
6 allowed to do that had they known that he was a
7 convicted felon.

8 Q. Why is that?

9 A. The California Association of Criminalists is
10 an extremely ethical and-- organization and
11 comprised of a lot of the oldest and most
12 experienced forensic scientists in the nation
13 and the world. And this is something that they
14 wouldn't tolerate.

15 Q. You were also asked about Mr. Pickard
16 expressing an interest to you in publishing in
17 the CLIC journal and that you told him to
18 submit it and that a peer review board would
19 look at it for approval. Do you recall saying
20 that in direct examination?

21 A. Yes, I do.

22 Q. And was that an actual likelihood that that
23 would occur, that he would be published in the
24 CLIC journal?

25 MR. RORK: Judge, again, whether

1 there's a likelihood or not, he testified it
2 would be subject to the peer review, the
3 editors would make the decision, it would be up
4 to them. But other than that testimony, I
5 would object as otherwise purely speculation.

6 MR. HOUGH: Judge, he's also
7 testified that he was on the peer review board.

8 THE COURT: Yes, overruled. Go
9 ahead.

10 A. Mr.-- none of Mr. Pickard's work would have
11 ever made it to the CLIC journal. He lacked
12 any kind of credibility within the profession
13 to be able to make comments on those particular
14 topics.

15 Q. (BY MR. HOUGH) You were asked about your own
16 personal collection of papers and articles
17 that-- that you have accumulated in your
18 personal library. Do you recall that?

19 A. Yes, I do.

20 Q. Would it be safe to say that that only consists
21 of those certain topics that you personally are
22 interested in?

23 MR. RORK: Well, Judge, I would ask
24 for-- number one, ask for a foundation to
25 identify what the 6 or 700 items were that he

1 put in there, and he's indicated earlier there
2 were categories that were provided, other than
3 just a question of that nature.

4 THE COURT: Overruled. Go ahead.

5 Q. (BY MR. HOUGH) You may answer, sir.

6 A. Could you repeat it, please, Mr. Hough?

7 Q. You were asked on cross examination-- or excuse
8 me, direct examination. I'm used to doing
9 direct examination myself--

10 A. Uh-huh.

11 Q. -- particularly of Government employees. You
12 were asked on direct examination about your
13 collection of papers and articles relevant to
14 drug topics. Do you recall that?

15 A. Yes, sir, I do.

16 Q. And would it be safe to say that those items in
17 your personal library would only consist of
18 those articles and items topically that are of
19 interest to you?

20 A. That's correct.

21 Q. And would it be your opinion that the same
22 would be true of any chemist?

23 A. Yes, absolutely.

24 Q. There are literally millions of articles out
25 there relative to chemistry topics generally.

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Correct?

A. That's correct.

Q. It would be impossible to keep and catalog those items of which just came in the door that you weren't interested in. Correct?

A. That's correct.

Q. And in your official capacity with DEA, you get e-mails and phone calls all the time from people seeking some type of information; is that correct?

A. That's correct.

Q. And those that are of interest to you, you may retain. Correct?

A. Yes.

Q. That that is not of interest, you delete. Correct?

A. That's correct.

Q. Such as deleting the e-mails that you testified Mr. Pickard sent you in this case. Correct?

A. That's correct.

Q. You were asked about the-- the various professional associations of which you are a member.

A. Yes.

Q. And would you, for the record, recite those for

1 us?

2 A. The first one is the Northwest Association of
3 Forensic Scientists, it's a regional forensic
4 group that incorporate members from Alaska,
5 British Columbia, Canada, Washington, Idaho,
6 Montana. Pretty much down in through
7 California and Nevada.

8 Q. Are you familiar with the qualification for
9 membership in that association?

10 A. Yes, I am. I was membership secretary for six
11 years.

12 Q. And would Mr. Pickard qualify as-- for
13 membership in that association?

14 MR. RORK: Judge, again, whether or
15 not Mr. Pickard would qualify for membership in
16 the President's roundtable, I object that it's
17 irrelevant to the question asked here and
18 outside the scope of direct. And I'm going to
19 bring up all the memberships he is in.

20 THE COURT: Both sides have a
21 different objective in their-- so I will
22 overrule your objection. You may go ahead.

23 A. Certainly on the face of it within the
24 structure of the by-laws Mr. Pickard would be
25 eligible. However, I don't know for a fact

1 that he would pass the scrutiny of the
2 organization, who would have to approve him,
3 knowing full well he is a convicted felon.

4 Q. (BY MR. HOUGH) And would that same be true of
5 the other professional memberships of which
6 you're a member?

7 A. Yes, it is.

8 Q. Now, there are certain individuals that DEA
9 actually licenses to manufacture what are
10 otherwise controlled substances. Correct?

11 A. You know, I'm really not familiar with how the
12 licensing process goes, the regulatory end.
13 I'm not familiar with that.

14 Q. And you indicated in direct examination that
15 you are familiar with-- strike that. You
16 indicated you're a forensic chemist. Correct?

17 A. That's correct.

18 Q. Describe for us in layman's terms what is a
19 forensic chemist.

20 A. Generally speaking, a forensic chemist is a
21 chemist who takes and applies their chemical
22 training and knowledge to resolve matters of
23 law. For example, the identification of a
24 controlled substance, whether or not it is
25 cocaine, whether or not it is heroin, whether

1 or not it is marijuana. Forensic chemists may
2 also do physical types of tests in examining
3 paint chips or metals, bullet comparisons or
4 compositions and things like that. So it's an
5 individual who has a question of legality where
6 their analysis might implicate or exonerate an
7 individual's activity in a suspected crime.

8 Q. You also testified that you were familiar with
9 Special Agent Karl Nichols.

10 A. Yes, I am.

11 Q. And describe for the jury, if you would,
12 please, your familiarity with Agent Nichols.

13 A. Mr. Nichols came on board with the DEA
14 laboratory about-- I want to say within my
15 first six months there. And he was assigned to
16 me for training.

17 Q. You trained him?

18 A. Yes.

19 Q. You were familiar then and are familiar with
20 his work as a forensic chemist?

21 A. Yes, I am.

22 Q. And based upon your definition of forensic
23 chemists and your knowledge as you have
24 testified of Mr. Nichols and Mr. Pickard, would
25 you tell us whom you would be more prone to

1 trust on matters of chemistry?

2 MR. RORK: Judge, I object to the
3 nature of the form of whom he would be more
4 inclined to trust. I think it's irrelevant and
5 prejudicial.

6 MR. HOUGH: He can offer this
7 opinion, Judge. He's testified both to his
8 knowledge of Agent Nichols, Mr. Pickard and
9 forensic chemistry generally.

10 THE COURT: Well, I'm not sure that
11 we have a particular-- I'm going to sustain the
12 objection. Let's stay off things like that.

13 MR. HOUGH: I have no further
14 questions. Thank you.

15 THE WITNESS: Thank you.

16 REDIRECT EXAMINATION

17 BY MR. RORK:

18 Q. Now, Mr. Ely, with respect to the e-mails in--
19 that's been marked as P-106, you have had a
20 chance to review them and determine whether or
21 not the content was consistent with--

22 MR. HOUGH: Objection, Judge. The
23 Court has previously sustained objections to
24 Exhibit 106 and ruled that inquiry is not
25 appropriate.

1 MR. RORK: Judge, that makes the
2 previous discussions-- Mr. Hough came up and
3 asked questions about e-mails, ones that were
4 good or weren't good and what he deleted and
5 what he didn't delete. And my question is just
6 whether or not he reviewed P-106 and was it
7 consistent with other testimony. That was the
8 sole question to be asked of him.

9 MR. HOUGH: Judge, the question
10 violated the order of the Court.

11 THE COURT: Well, overruled. Go
12 ahead.

13 Q. (BY MR. RORK) You did have a chance to read
14 P-106 and determine whether or not the subject
15 matter was consistent with what you testified
16 to earlier, did you not?

17 A. Generally speaking, the subject matter is
18 somewhat consistent with what I've testified
19 to.

20 Q. And with respect to the AAFS meeting, are you
21 aware that Mr. Pickard with Sandy Angelos-- met
22 with Sandy Angelos, the Marquardt lab chemist
23 and Joe Bono of special testing?

24 MR. HOUGH: Objection. Assumes facts
25 not in evidence. There's no evidence

1 whatsoever that that happened, Judge.

2 Q. (BY MR. RORK) Isn't that the American Academy
3 Forensic Scientists meeting that you've been
4 talking about was attended in February of 1998?

5 MR. HOUGH: Judge, the question that
6 he asked assumes facts not in evidence and the
7 Court didn't rule and then he asked another
8 question.

9 MR. RORK: The reason I did, Judge,
10 was in light of the objection to assist the
11 Court. I was asking him if that meeting was
12 the same one he had testified to. I can wait
13 and have you rule on--

14 THE COURT: Well, why don't you wait
15 until we rule on it.

16 Q. (BY MR. RORK) Let me just ask you a different
17 question. Were you at the AAFS, is that short
18 for the American Academy of Forensic
19 Scientists?

20 A. Yes, it is.

21 Q. And in February of 1998, at that meeting where
22 you met with Pickard, do you know whether or
23 not Sandy Angelos, the Marquardt lab chemist,
24 was present at that meeting, did you recall?

25 A. I-- I believe he was there. I don't recall.

1 Q. Do you recall whether or not Joe Bono with
2 special testing may have been at that same
3 meeting?

4 A. Yes, I-- I recall Joe being there.

5 Q. And do you recall whether or not Mr. Pickard
6 indicated to you, at the time he visited with
7 you or in your presence, met with either Mr.
8 Angelos or Mr. Bono?

9 A. I don't recall him mentioning that.

10 Q. Were you aware that Mr. Pickard is a member of
11 the California Association of Criminalists?

12 MR. HOUGH: Objection. Assumes facts
13 not in evidence. There's no evidence of that,
14 Judge.

15 MR. RORK: Judge, that's why I'm
16 asking if he's aware of it. He talked about
17 associations he belonged to, so I'm asking--

18 THE COURT: Ask your question again,
19 please.

20 Q. (BY MR. RORK) Are you aware that Mr. Pickard
21 is a member of the California Association of
22 Criminalists?

23 MR. HOUGH: The question assumes
24 facts not in evidence.

25 THE WITNESS: May I answer, Your

1 Honor?

2 THE COURT: Yes, you can answer.

3 A. My impression is that no, he is not.

4 Q. (BY MR. RORK) And do you know whether or not
5 he would be a member of the International
6 Association of Forensic Toxicologists?

7 A. I would have no idea about that.

8 Q. Do you know whether or not he would be a member
9 of the American Chemical Society?

10 A. Just about everybody is a member of the
11 American Chemical Society.

12 Q. Would you agree that all of Mr. Pickard's
13 inquiries with you concerned drug control
14 measures not proliferation?

15 A. No, I wouldn't categorize them all as drug
16 control measures, but I don't recall any of
17 them being regarding proliferation.

18 Q. And with respect to your working with Agent
19 Nichols as a forensic chemist and then he
20 transferred to become a DEA agent, do you
21 recall him ever stating to you that he quit the
22 forensic chemistry for the thrill of the kill?

23 MR. HOUGH: Judge, we'll object
24 that's just--

25 THE COURT: Sustained.

1 MR. RORK: Well, Judge--

2 THE COURT: I sustained the
3 objection. Go ahead.

4 Q. (BY MR. RORK) Were you present when Agent
5 Nichols testified before the grand jury in this
6 case?

7 A. No.

8 MR. RORK: I will ask him then.
9 Thank you. That's all the questions I have at
10 this point then, Judge.

11 RE CROSS EXAMINATION

12 BY MR. HOUGH:

13 Q. Sir, based upon that-- the questions Mr. Rork
14 just asked and your knowledge of Mr. Nichols
15 and Mr. Pickard on matters of chemistry, based
16 on your personal knowledge then, whom would be
17 more well-versed in such matters?

18 A. As far as the analytical portion?

19 Q. Yes.

20 A. I would say Mr. Nichols.

21 Q. And as it relates to the inquiries by Mr.
22 Pickard of you, can you fathom circumstances
23 that a drug trafficker would discuss the
24 proliferation with you?

25 A. Oh, no.

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Q. And why is that?

A. Well, they would be giving up what they were going to be doing if they made comments like that. And, obviously, the first time someone would make a comment like that, that would be the last time they talked to me.

MR. HOUGH: Thank you.

MR. RORK: Thank you, Mr. Ely. Your Honor, I have no further questions.

THE COURT: All right. You may step down and be excused.

THE WITNESS: Am I excused, Your Honor?

THE COURT: Yes, sir.

THE WITNESS: Thank you very much.

(THEREUPON, the remaining day's proceedings were not ordered transcribed).

